RECREATIONAL ACCESS TO LAND IN SCOTLAND AND BRITISH COLUMBIA

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PhD. DEGREE
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1988

DECLARATION

I declare that this thesis is the result of my own work.

Briony Penn

ACKNOWLEDGEMENTS

I would like to thank my departmental supervisors, (Prof.) J.T. Coppock and Dr. G. Robinson for their help and guidance. Special thanks is due Dr. R. Aitken, who supervised this thesis and offered timely suggestions outwith his normal working hours and with no renumeration except my sincerest gratitude. Many thanks to the computing and technical staff in the Geography Department for their help. Family and friends from both sides of the Atlantic have given me continual support and encouragement for which I will always be grateful. Most of all I would like to thank Donald, without whom I would never have survived.

ABSTRACT

This study is an exploratory investigation of access to land for non-motorised outdoor recreation in Scotland and British Columbia. It is a broad interdisciplinary study that examines the relationship of recreation, as a developing twentieth century land use, with existing traditional economic land uses. The accessibility of the two regions is examined with particular attention given to the role of legal principles and their interpretation in moulding the development of recreational access. The two western societies of Scotland and British Columbia are used as case studies to assess the influence of the traditional principles of tenure and Judaeo-Christian attitudes on the development of access for recreation, within two differing patterns of land use. The purpose behind the study is to bring a humanistic perspective to recreation research, by placing recreational land use into a historical, legal and social context.

The case studies revealed similarities in the mechanisms used by land controlling interests to control access, despite differing patterns of land use and tenure. There were also similarities in the way the public assessed the accessibility of land through basic experiential "rules of thumb". These mechanisms and "rules of thumb" derive from the same historic legal principles regarding the way land is used and perceived, e.g., the ability to defend land from trespassers, the doctrine of estate which enables the fragmentation of rights of property. The implication of these principles of common law has been a difficult development of access for recreation within the two structures of economic land uses, with similar issues arising. The root of the problem has been that historically the law has been concerned with the control of access for the protection of property and economic uses of land. Scotland has had a historical headstart in litigating recreational access issues and implementing multiple tenured designations, but both regions appear to be on the same path of development.

In Scotland and British Columbia, the arrival of access issues has led to an awareness of the concept of accessibility and the complex relationship that exists between the public, land controlling interests and the State, which emerges as a third party to resolve issues over the right to walk and the right to own. For both regions, the problem lies in determining the onus of responsibility for the costs of maintaining access. Pragmatically, the question has become one of balancing the demand for land to walk across with the supply from economic land uses. Philosophically, the problem is one of determining the value of the right to walk.


PRIVATE
BEWARE SNAKES AND NETTLES
DANGER
BULL IN FIELD
ONE WAY
OR ANOTHER
THIS WAY
NO TRESPASSING
AUTHORISED PERSONS ONLY
SOMETIMES
THAT WAY
PICNIC AREA
KEEP OFF ROAD
KEEP OFF THE GRASS
WELCOME
NO ENTRY
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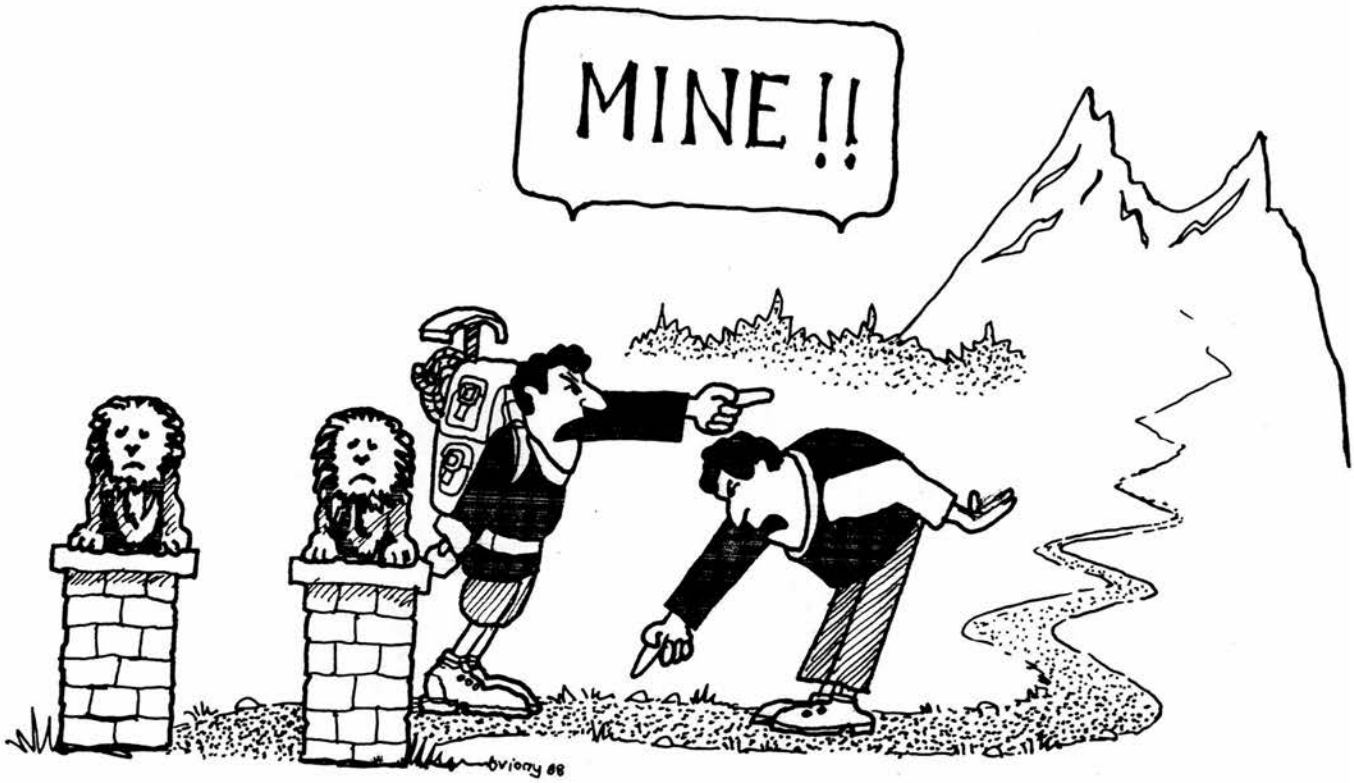
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ABBREVIATIONS

ARC	AGREEMENT FOR RECREATION AND CONSERVATION
B.C.	BRITISH COLUMBIA (traditional full stops are used for British Columbia as is customary)
BCCA	BRITISH COLUMBIA CATTEMAN'S ASSOCIATION
BCWF	BRITISH COLUMBIA WILDLIFE FEDERATION
BWB	BRITISH WATERWAYS BOARD
CC	COUNTRYSIDE COMMISSION FOR ENGLAND AND WALES
CCS	COUNTRYSIDE COMMISSION FOR SCOTLAND
CFI	COUNCIL OF FOREST INDUSTRIES
CLR	CENTRE FOR LEISURE RESEARCH
COSLA	CONVENTION OF SCOTTISH LOCAL AUTHORITIES
CRMP	CO-ORDINATED RESOURCE MANAGEMENT PLAN
CSCT	CENTRAL SCOTLAND COUNTRYSIDE TRUST
CTT	CAPITAL TRANSFER TAX
ESA	ENVIRONMENTALLY SENSITIVE AREA
FGS	FORESTRY GRANT SCHEME
FLULC	FORESTRY LAND USE LIASON COMMITTEE
FMC	FEDERATION OF MOUNTAIN CLUBS
MCS	MOUNTAINEERING COUNCIL OF SCOTLAND
MOD	MINISTRY OF DEFENCE
MSC	MANPOWER SERVICES COMMISSION
NCA	NATURE CONSERVANCY AREA
NCC	NATURE CONSERVANCY COUNCIL
NNR	NATIONAL NATURE RESERVES
NPPA	NATIONAL AND PROVINCIAL PARKS ASSOCIATION
NSA	NATIONAL SCENIC AREA
NTS	NATIONAL TRUST FOR SCOTLAND
ORC	OUTDOOR RECREATION COUNCIL OF BRITISH COLUMBIA
QUANGO	QUASI-AUTONOMOUS NON-GOVERNMENTAL ORGANISATION
RSPB	ROYAL SOCIETY FOR THE PROTECTION OF BIRDS
SDA	SCOTTISH DEVELOPMENT AGENCY
SDD	SCOTTISH DEVELOPMENT DEPARTMENT
SLF	SCOTTISH LANDOWNERS' FEDERATION
SROWS	SCOTTISH RIGHTS OF WAY SOCIETY
SSC	SCOTTISH SPORTS COUNCIL
SSSI	SITE OF SPECIAL SCIENTIFIC INTEREST
STB	SCOTTISH TOURIST BOARD
TFL	TREE FARM LICENCE
TRRU	TOURISM AND RECREATION RESEARCH UNIT
WMA	WILDLIFE MANAGEMENT AREAS

CHAPTER 1

INTRODUCTION

1.1 Description, objectives and philosophy of the study

> "Adam had ownership and property of things; ...*de facto* use cannot be distinguished from juridical control, every human right on the basis of which material goods are owned, is contained in the laws of kings". (Eco, 1983, p.342)

This study is an examination of the development of access to land for non-motorised forms of outdoor recreation within the structure of traditional land use interests in British Columbia and Scotland. It is examined within a historical and regional framework, first, by looking at the prevailing legal principles of property and use of land that have come to influence the accessibility of land for recreational use and, second, the issues that have arisen as the use of land for recreation has evolved in this century within the existing structure of economic land uses. The relationship of recreation with economic land uses is examined both in terms of when recreation is the primary interest in the land, for example, pleasure grounds where recreational access is explicitly granted, and when it is the secondary interest in the land, for example, recreational use along transport corridors when use for transport is the primary use.

The study examines the concepts of 'access' and 'accessibility' in these two regions with a view to determining the role of western legal principles (and their interpretation by recreational interests, landowning interests and state interests) in moulding the development of recreational access. Scotland and British Columbia (hereafter B.C.) have experienced a great expansion in recreational land use in the last forty years within a broadly

similar set of social and cultural circumstances. The populations of both Scotland and B.C. have predominantly Western European roots from which stem Judaeo-Christian beliefs and legal doctrines that have influenced the way land is organised, used and viewed. In both regions the legal development of recreational rights of access has been fundamentally problematic because of the priority of doctrines of property.

Geographically, the populations are similarly distributed with a strong polarisation between the sparse rural (hinterland) areas and the urban concentrations (a statistical comparison of the two regions is included in Appendix 2). The urban areas of both regions are similar in their institutional organisation and the controlling relationship that these urban 'heartland' areas have developed over the hinterland. The regions differ critically in the nature of the land uses and ownership in the hinterland. Scotland's hinterland is largely rural, open, and privately owned, whereas B.C. with a hinterland ten times the size, is largely forested, publicly owned and based on forestry and mineral resource extraction. With such contrasting structures of landownership and land use, the comparative study is used to identify the pervasiveness of the common legal principles within these differing land use structures and the influence of these legal principles on present patterns of access. The comparative study is also used to determine the factors that influence the responses by both regions to similar issues that have evolved concerning access to land.

The case studies were developed in view of these objectives through various methods of data collection. Questionnaires and interviews were used to identify contemporary perceptions and

attitudes held by the recreational users, landowners and managers towards recreational access in each region. In particular, the questionnaire surveys conducted in both regions were examining the principles by which access to land was judged and interpreted by the public. These surveys constituted a major part of the research in developing methods for determining perceptions of access, and attitudes towards the provision and restriction of access.

Another major part of the research was the identification and analysis of specific contemporary issues concerning recreational access. From an analysis of the issues, it was possible to identify the factors influencing them, the different attitudes to accessibility of the actors, the relationship between the different interests in the land, and the principles by which the issues were adjudicated and managed. Finally, an examination of the development of statute law and case laws concerning access to land was made to determine the historical traditions and the principles by which laws were made and cases litigated.

Though there is a regional emphasis, findings of the case studies have been used to develop the concepts of recreational access and accessibility in a broader, theoretical sense. A working framework for examining accessibility is developed in this research, based on cognitive categories of access.

The philosophical basis behind the study is to bring a humanistic perspective to recreational research. Previous recreational research has been focused on economic and managerial concerns of formally-managed sites, especially in North America. This has led to research being primarily interested in the location, capacity level, classification, economic benefit and use patterns

of particular formalised sites like national parks, etc. (Dooling, 1985). These studies have been based on a presupposition that the existing principles by which land has been set aside and managed for recreational use are satisfactory to meet evolving demands and that issues can be resolved through their application and management techniques. The basic assumption of this study is that there is the need to examine recreational use of land from a broader perspective. This was achieved by critically examining the relationship between recreation and other interests in the land within a historical context.

The need to broaden the perspective of recreational research also evolved because of a pragmatic concern to understand contemporary issues of access that have both environmental and social implications. With the growth of outdoor pursuits, the movement of people across land on foot has extended into and intensified within other land uses, including conservation. Demands have increased to integrate and control recreation. New planning and legal mechanisms are being explored in order to find ways of sharing and maximising the land resource. With these increasing demands for places to move and recreate, there is a need to consider, first, the nature of how society controls the accessibility of the land, second the principles by which we control land and third the legal and social mechanisms that have developed to do this. By exploring the concept of accessibility within these two case studies, the study attempts to bring a fuller understanding of the inherent problems and factors of accessibility. A fuller discussion on the context of the research and method of the study are discussed in Chapter 2. The next section provides a brief

introduction to the approach and structure of the thesis.

1.2 Approaches and structure

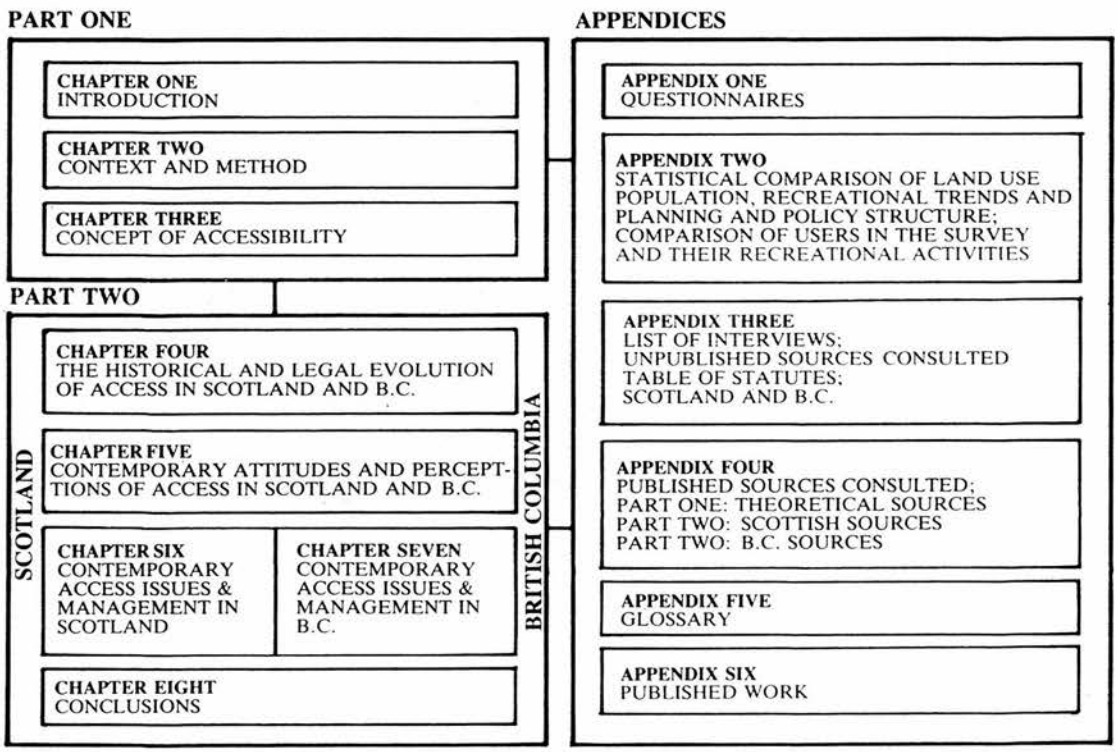
Part One introduces the concepts and terms used in the case studies (Chapter 3), as well as the context of the research and method as already mentioned (Chapter 2). Chapter 3 explores the concept of access and accessibility using a theoretical framework developed from behaviourial geography and incorporating data from the questionnaires.

Part Two of the study adopts a traditional geographic approach, by examining the issues, attitudes and management of access within these two regions and the man-land relationships that have evolved. Approaches from historical, political and behaviourial geography are drawn on in order to derive data from the case studies and analyse it in a discursive, narrative way.

The case studies are structured on three levels to aid continuity: the first by chronology, the second by region and the third by land use (Figure 1.1). Chapter 4 examines the historic evolution of access and attitudes to access within traditional land uses prior to the expansion of outdoor recreation, within Scotland and B.C. Chapter 5 examines contemporary attitudes towards access and perceptions of the accessibility of different land uses in the two regions, as derived from the questionnaire survey. Chapter 6 and 7 examine the contemporary issues and management of access within Scotland and B.C. respectively. Within these chapters, the relationships of different land uses with recreation are developed separately within the categories of "accessibility". These sub-categories are divided into black, white and grey areas of land

uses, reflecting public interpretations (derived from the questionnaire surveys) of how accessible the land use is: black areas being inaccessible, white areas being accessible and grey areas having degrees of ambiguity as to their accessibility. The comparisons and analysis of the relationship are developed within these subcategories, then brought together in a summary and discussion at the end (Chapter 8).

Figure 1.1 Structure of study



The questionnaires are contained in Appendix 1. Supportive data regarding the case studies has been placed into Appendix 2, which includes statistical data on land use, population and recreational trends, as well as comparative profiles and recreational activities of the respondents in the surveys. Lists of interviews and unpublished sources of data in Scotland and B.C. are included in Appendix 3; these are divided into sections concerning Scotland and B.C. Published sources consulted are in Appendix 4 and categorised into three sections: sources consulted for Part 1, sources consulted in Part 2 for the Scottish case studies and sources consulted in Part 2 for the B.C. case studies. A Glossary is included in Appendix 5 and published work is in Appendix 6.

1.3 Working definitions of the concepts of recreational access and accessibility

This section includes a brief summary of working definitions; the detailed discussion on the concept of access is made in Chapter 3. The summary is included here to set out the working definitions of the terms of recreational access and accessibility for the discussion on the context and method of the research in Chapter 2.

In simplest terms, "access" is defined as the means and right of approach; "accessibility" is the ability to be approached. "Recreational" (for purposes of this study recreational is to be read as "outdoor recreation") modifies the word in the sense that it defines the object as land or water and the subject as those seeking recreation. The ability of the subject to approach the object is influenced by a whole range of interrelated factors, for example

physical barriers, legal constraints, perceptual barriers as well as 'access' itself. It is these factors that are brought together under the concept of accessibility, as discussed in Chapter 3.

In the broadest sense, accessibility describes the dynamic relationship between people and land, when groups of people seek access to land for their recreation. In seeking access to land, users establish a relationship with those who are controlling the land and those appointed by society to mediate the interests of the seekers and the land controllers.

This definition of recreational accessibility is distinctive from other recreational concepts for the following reasons. First, it does not imply spatial limitations, the object to be approached can be anywhere and everywhere, in other words any type of land in a legal, physical or social sense. This is what gives the approach a broader perspective than research examining only formal sites in isolation from either other land uses or the historical context.

Second, the concept of access takes in the legal relationship each of the groups has with the land. This leads to a consideration of landownership, tenure and the fragmentation of rights to different parties within land tenures. Placing recreational land use into a legal (and thereby historical legal) framework allows an examination of some of the important concepts and principles which underlie the occupation and use of land. Access and ownership can be considered together since access and restrictions on access can exist as rights or constraints on ownership. Access can even imply a type of temporary occupation, which is useful in visualising issues that hinge upon the ambiguities of access and ownership. Within this legal framework, access can also be distinguished as a

single concept, separated from other facilities inherent in recreational land use like the amenity or scenery of the land and built facilities like toilets or car parks, which is critical when examining the value of recreational use, since all these component facilities of the resource have different values placed on them by society.

Finally, because the concept considers the relationship between the groups themselves, there is a means of understanding how the dynamism operates between those seeking access and those controlling it. This leads to a consideration of the balance of power between those who seek and those who control through the mediating influence of the State. Accessibility is a unique concept to explore because access sits uneasily in people's minds between a right and a resource.

In summary, accessibility can be described as a dynamic relationship between land and people, when people seek land for recreation. In doing so the parameters of time and place are broadened and the ambiguity and complexity of recreational land use across different land tenures can be examined at varying levels of meaning.

Given these working definitions, the next chapter examines the context of the research in both its approach and in the selection of the topic for study.

CHAPTER 2

CONTEXT AND METHODS

2.1 Introduction

The first section examines the context of the research under two subheadings: a) the development of the research topic and, b) the context of the research, followed by the section on method.

2.1.1 Development of the research topic

Initial investigations focused on a comparative study of long-distance trails throughout the western world, examining their institutional arrangements and implementation. The background to this research is relevant in that it exposed a gap in the philosophical basis of examining recreation within the existing structure of land uses and tenure. Because of this gap, the research was floundering with concepts and terminology that had not been fully explored in an academic context.

With an initial examination of several case studies in Britain (Countryside Commission, 1971), Canada (Woodworth and Flygare, 1981; Alberta Trails Task Force, 1978), New Zealand (New Zealand Walkway Commission, 1977), Japan (Michio, 1969), United States (Murray, 1974), South Africa (S.A. National Hiking Way Board, 1978) and Europe (Evans, 1982; Woolmore, 1977) certain key issues were evident. Long-distance trails were one curious cultural phenomena of a much larger subject of recreational access. By virtue of their size, symbolic importance and position at the top of the hierarchy of access routes for recreation, they received some attention in the recreational research field, notably Burch (1979), Henshaw (1984), Lowrey (1981) and Waller (1982).

Research has either focused on the management and policy of long-distance trails, designed to feed back into the institutions that manage and perpetuate them, or as in Lowrey, examined their symbolic significance. However, long-distance trails typically touch on a great many more issues than these studies can embrace from their limited perspective. The issues arise because these trails wind through a full range of land uses where different relationships have developed between recreation and the various land uses. Also, the need for mature societies to impose statutory provision for opportunities to walk long distances begs important questions about these societies' perceptions of access to land. It became apparent that it was difficult to study a phenomenon by considering it in isolation from the deeper issues of how recreation has developed within this socio-legal structure. Only by placing them in the broader context of access to land would a full understanding be possible.

In exploring these issues, it was apparent that very little real attention had been given to the question of access to land for outdoor recreation, access being always considered an assumed aspect of formal provision for recreation as a land use. A variety of different classifications of recreational land were looked at to see if there was some system that would consider different legal relationships of recreational use to different land types.

Classifications of recreational land have been made on the basis of location, size and degree of facilities (Clawson et al, 1960), physical resource characteristics (ORRRC, 1962; Vedenin and Miroschnichenko, 1971), the suitability of the resource base to support recreation (Coppock, Duffield and Sewell, 1971; Block and Higuett, 1982; Bruns, 1979; Wibberley, 1968), landscape quality

(Dearden, 1980) and site-specific suitability (Hogg, 1977). However, in all these systems, access to the land is not taken into account. Again it is an underlying assumption related to formal sites.

Recreational geography has had a primary concern with predictive and explanatory research, regarding the location of public and commercial facilities (Smith, 1983; Cosgrove and Jackson, 1972). This research has typically been in response to market forces and managerial demands within these facilities.

The problems that had been encountered in trail implementation in these western societies suggested that demands from both the public and land managers were diversifying from facility provision into a wider range of opportunities, for instance integrating recreational use through a variety of planning, management and legal mechanisms. Given this need for new perspectives and a lack of attention to the factor of access to land in recreational research, the topic developed into an exploration of access issues in general.

2.1.2 Research context

Various branches of geographical research were drawn from for the philosophical basis, methodology and theory of this research. The following sections identify the research in recreational geography and humanistic geography, including the behaviourial and historical branches, that have formed the context for this research.

2.1.2.1 Context in recreational geography

Recreational research has developed in the last forty years as primarily an economic branch of geography, examining public

provision of formally managed sites and the economic implications in that supply, e.g., site planning, management strategies, carrying capacities, supply and demand assessments. In Canada, Wall emphasises the lack of recreational research that provides "insights into man-environment relationships" (1981,, p.235). He goes on to identify the "tendency to emphasize the public provision of recreation opportunities" (p.239) and the lack of historical context to recreational research.

> "Few attempts have been made, particularly in North America, to describe or understand the roots of present-day patterns of recreational land use as revealed in the activities of earlier periods." (Wall, 1982, p.139)

These gaps in Canadian research are echoed in some respects by European recreational geographers. In Smith's synthesis on recreational geography, he states:

> "When someone asks, 'what is recreational geography good for?', the answer is often a reference to the ability of geographers to select the best site for a business or public service centre." (Smith, 1983, p.102)

The growing need to assess recreational land use in a broader humanistic framework has developed from various sources for various reasons. There has been the need, expressed by those involved directly with outdoor recreation, to restate the problems that they are confronted with. For example, park managers throughout the world are expressing the need to be involved with the planning and policy of land beyond their boundaries since ecosystems do not operate within the same boundaries (Crowe, 1974; Lucas, 1968).

> "The whole land must be treated as one complex and not as and unrelated collection of landuses." (Crowe, 1974, p.170)

Researchers involved with the 'relevance debate' (Coppock, 1974), both from geographical disciplines and related disciplines of law, and political science, are concerned with the more intricate

relationships between groups of people and the allocation of resources with respect to outdoor recreation. This area of concern has developed most critically in rural land management where outdoor recreation has developed within traditional land uses. The following discussion examines the research in this area that provided the basis for this study.

1)**Outdoor recreation and rural land use**

There has been a recent focus of research into the relationship of outdoor recreation with rural land uses, especially in Europe. European research, predicatably, has advanced the subject to a greater extent than in North America, developing within societies that have greater pressures upon the land resource, and a much smaller percentage of public lands.

Several examinations have been made of access and the relationship of recreation with rural land uses (Duffield and Owen, 1970; Coppock and Duffield, 1975). The Access Study for the Countryside Commission (Centre for Leisure Research, 1984 and 1986) provides the most comprehensive examination to date of the concept of accessibility in four case study areas in England and Wales. The Access Study began six months after this study and there were efforts made to collaborate with the Centre for Leisure Research on concepts, definitions and approaches. Their research follows on a major policy directive of England and Wales from government (Countryside Commission, 1983) and indirectly landowning bodies (Country Landowners' Association, 1984). This study has borrowed theoretical frameworks from a variety of disciplines including political science, e.g., Pahl (1970), to examine the allocation of

resources, i.e., access, within rural areas and the relationships between groups and the land that have evolved to control this allocation. Similarly, models of typologies and ideologies of property were used (Newby *et al*, 1978) to explain different landowning attitudes towards recreation.

Research in Europe has been spearheaded by the Council of Europe. They have held conferences on access to nature and mountains (1980; 1982) and dealt with the relationship of nature conservation and recreation. Water based recreation and its relationship with conservation and water uses is a subject for a variety of papers throughout the western world (Birrell and Silverwood, 1982; Marien, 1980; New Zealand Department of Lands Survey, n.d.). The relationship of recreation with forestry was highlighted in the World Congress of the International Union of Forest Research Organisations, in 1981. Outdoor recreation and rural access in Australia are discussed by Pigram (1981; 1983) focussing on countryside land uses and recreation.

Theoretical research has been done regarding the nature of the relationship between land uses, for example, Hodge (1982) refers to frictional and fundamental competition of land uses, including recreation with agriculture. In essence, he explores the relative compatability of rural land uses. Related to this type of research have been recent studies on access to the countryside in terms of the legal and economic relationships that exist between landowners, and users, notably, Wunderlich (1979), Dales (1972), McCallum and Adams (1980), Lyall (1970), Thomson and Whitby (1976), and Curry (1985).

These studies have examined various aspects of rights of access

within the context of landownership, clarifications of common law and/or the implications for pricing access to land for recreation. These arguments on the value of countryside recreation touch on the value of public access and attitudes towards rights. For example, McCallum and Adams feel the costs of hillwalking in Scotland to landowners could lead to user-pay systems, but that this would lead to public perceptions of an infringement on public rights. Curry's argument is that free access is not important to recreationists especially at managed sites and that prices should be affixed to pay for access costs as well as other facility costs. This kind of research provides important ideas and assessments of the legal and economic arguments within the larger concept of accessibility.

In Canada, this has been a very recent focus in the research. The 'rural' emphasis of regions that are based on agricultural economy is switched to a 'wildland' emphasis where the economy of these lands are based on primary resource extraction; this is particularly relevant in B.C. where there is a very small rural component of the land resource. Nelson (1978) examines wildland ideology and management and the relationship of recreation and conservation with other economic uses. He looks at the historical and institutional aspects of wildland, and goes on to suggest that

> "we need more historical and comparative studies in order to understand what wildland and conservation concepts, policies and practices have actually done to people and land." (Nelson, 1978, p.1)

Wall and Marsh (1982) examine the concept of accessibility with relation to pedestrian access to land where there are changes in government policy on access to public lands. With increasing conflict between recreation, industrial uses and conservation, parks

as recreational grounds are consequently coming under increasing pressure and both control of entry and pressures outside the boundaries become issues.

In some specific Canadian cases, research has been carried out which explores the relationship of users and landowners in specific areas or cases. For instance, riparian rights and fishing rights have been the subject of several papers (Lee and Kreutzwiser, 1982; McDermid and Cherniak, 1979, Leatherberry *et al*, 1980) as well as access to private land (Cullington, 1980) and agricultural land (Sanderson, 1982). McCallum (1984) examines new legal responses to the provision of land for recreation and national parks. These are areas which are gaining interest in both practical and research terms, though as specific issues they do not address the broader questions about accessibility to land.

The majority of this research in both Canada and elswhere has been concerned with rural or wildland issues. The integration of recreation within urban areas, having less 'space' intensive activities, has largely been absorbed again within formal locational analysis. Recreational research has tended to overlook recreational use as a secondary land use within the urban infrastructure of corridors, private land, open spaces, road networks, etc. Though work such as Melendez' (1984) examines the role of streets and hidden open spaces in urban areas for recreational use. In order to bring greater emphasis to the land resource as a whole, this study integrates both the urban and rural/hinterland aspects of access and accessibility.

Two other branches of recreational geography have formed the basis from which this research is drawn. References and approaches

are also drawn from research on vehicular access and accessibility to facilities, and cognitive research on motivations and site selection.

2) Research on vehicular access and accessibility

A branch of recreational geography that has covered both rural and urban areas is the research concerning the concept of vehicular access and accessibility to facilities. The following researchers have used the concepts to describe the broad relationship between resources and people through the variability of transport links (access) to the resources: Gould (1969), Burton and Fulcher (1968), Moseley (1979), Huigen (1984) and Groome and Tarrant (1985). Their research has been concerned with characteristics of vehicular accessibility to facilities via road networks, timetables of public transport, opening hours of facilities, and the constraints these variables place on the accessibility of a facility. similarly, socio-economic characteristics of people reflect the extent to which they are able to gain access to services or facilities.

Though there is a different emphasis when considering pedestrian approach to and across land, the concept of accessibility and the processes by which people gain access to formal services through transport networks, are similar to this study. The conceptual frameworks developed by Moseley and others in describing the relationships inherent in accessibility, with the social, legal and physical constraints influencing people's access, are adapted to this study with regard to pedestrian access to land. Both perspectives are important in the final analysis of the resource base and the utilisation of the resource base, but in this research

context the object is the land itself and the nature of the approach has changed to the user on foot at the interface between landuses.

3) Cognitive and attitudinal research

Cognitive studies that have been undertaken within recreational research again have tended to be concerned with formal sites and cognition of various factors like crowding, landscape qualities, within these sites. For example, Elson (1976) describes action spaces within the transport network range of people for weekend trips, the underlying assumption being that people go to locations and recreation areas as they live in and experience the area. This model, examining behaviour and mapping patterns of use, and other behavioural research which looks at motivations for pursuing activities and behaviour in specific sites (Mercer, 1976; Kariel, 1984; Driver and Tocher, 1974), provided some basis for examining the perception of access and the interpretation of areas of accessibility in this study.

The cognition of the countryside as a recreational resource is developed in the Access Study (Centre for Leisure Research, 1984) from Sidaway (1982) and provides a working framework for categorising values and attitudes of users towards the countryside. Cognition of the countryside is also developed in Kassyk (1986) while cognition of the wilderness for recreation is developed by Aitken (1977). These studies have been specifically adapted to the British context so have less cross-cultural relevance but provide some basis upon which to categorise cognitive categories of the users about the accessibility of the land resource in the questionnaire surveys. Most cognitive research has been channelled

into environmental cognition, outside recreational geography, within the broad discipline of humanistic geography which is discussed in the section below (2.1.2.2).

2.1.2.2 Context in humanistic geography

Research by humanistic geographers in environmental cognition, attitudes to the environment and the historical perspective in examining man's relationship with the environment, formed the context for various aspects of this study. On the first level, developments of terms that define cognitive space like 'areas', 'open space', 'social space', 'paths', 'territory', by researchers like Altman (1975), Hall (1966), Buttimer (1969) and Lynch (1972) have been useful in developing terms to define the cognitive spaces of access, i.e., areas of accessibility.

Similarly, terminology and theory on perception, cultural beliefs, values and attitudes (Gold, 1980; Schiff, 1971) has been drawn on to develop the role of these psychological processes and concepts in influencing the relationship between recreation and other land uses. Research on spatial information and the various channels by which people receive spatial information provided some theoretical grounding on how perception, cultural rules, legal rules, promotional literature and semantics could influence individual interpretations of accessibility. Lowenthal introduced the idea of semantics and experiential components influencing the way individuals structure the environment (1972). These ideas were particularly relevant in identifying the semantics of access, i.e., words that carry with them the assumptions of access, like public parks.

Theoretical research on attitudes towards the environment was examined with the view to looking at the relationship between environmental attitudes and attitudes towards access. Theoretical debates like the "Judaeo-Christian debate" (O'Riordan, 1981, p.203; White, 1967) provided the context upon which ideas about the influence of Judaeo-Christian attitudes towards land and property would extend into attitudes towards access.

This debate has raised important arguments about the changing role of concepts of stewardship, and property, in mediating environmental damage, personal acquisition of rights and social responsibilities (Black, 1970). Access, being intrinsically tied to the notion of property and social rights, can be adapted into these arguments.

The historical approach, as developed by Harris (1978), was used to provide some insight into the historical basis for attitudes towards access. Work on colonial attitudes towards the land in B.C. (Cole and Tippett, 1977) and Scotland (Parry and Slater, 1980) contributed to the development of ideas of early attitudes towards the accessibility of the land.

The philosophical basis of the study was borrowed from the humanistic tradition in its objectives to increase and broaden the understanding of our man-land relationships. The concept of accessibility was approached in an "emancipatory" way (Sayer, 1984, p.45). The term emancipatory is a useful one, it means to set free from restraints and suggests that there exists human blind spots, assumptions and constraints towards objects which could well stand the test of critical evaluation. It is felt that access needs to stand the test of critical evaluation and one method of doing this

is by adopting some of these qualitative methods of humanistic geography.

Related social geographical objectives such as those embraced by Ley (1974) were influential to this study. Ley's style of analysis of the social and political relationships over the organisation of space and opportunities was important in both the development of the topic and the final analysis.

2.1.2.3 Summary of research context

In summary, the context of the research covers a broad range of geographical disciplines with both positivist and humanistic approaches. The following methodology (2.2) reflects the integration of the various influences upon the research as there is both empirical research into issues, policy and management of access, and qualitative, exploratory research into people's perceptions of access, and their attitudes towards constraints and rights.

2.2 Method

This section on method is divided into the following parts, reflecting the variety of methods of data collection used: 1) historical literature analysis, 2) questionnaires, 3) interviews, 4) detailed case studies. Two types of research were carried out: field work and literary analysis. Field work included research on the cognitive processes (perception, interpretation, beliefs and attitudes) through questionnaire and interview methods.

2.2.1 Historical literature analysis

With the objective of examining both factual details of the legislative development and governing attitudes towards land-ownership and access to it, several inter-related lines of inquiry were pursued: 1) the ways in which the land was organised for use, e.g., ownership, possession, management, designation and rights of access; 2) the fundamental principles behind the way land was organised, e.g., best use, security; 3) the effect these principles had on access, and where the boundaries grew up between those controlling the land and those seeking access to it; 4) the way in which these principles adapted to twentieth century pressures of growing populations, changing land use and the amenity movement; 5)the types of early perceptions and attitudes towards access that were held by seeking and controlling interests.

Historical sources for this data included original sources of land law, case records and land policy, legal writings, parliamentary debates, political and personal journals, literature, and drawings. Facts and legal doctrines were drawn directly from source, while early perceptions and attitudes were interpreted from journals, quotations, and the expression of these attitudes in the judgement of legal cases and statute law.

2.2.2 Questionnaires

2.2.2.1 Objectives and methodological problems of the questionnaires

The questionnaire methodology constituted the main source of original data collection so this section highlights the methodological problems as well as the techniques used.

The objectives of the questionnaires were to: 1) to test qualitatively the researcher's assumptions about workable categories

of land, using criteria of ownership and use, which people would understand and be able to comment on regarding their accessibility; 2) to find out what people's awareness of access opportunities were to categories of land; 3) to examine how people felt about constraints on their access to these categories of land by external factors like legal constraints, physical barriers, the imposition of safety and health controls or the protection of privacy; 4) to find out what beliefs and principles guided peoples' attitudes to access issues.

The most fundamental problem encountered in reaching the objectives was presenting access issues and concepts in a form in which people could understand. This led to an exploratory survey method which included the use of graphical techniques to convey concepts. The development of the questionnaire was characterised by a number of problem-solving exercises. The first was creating a conceptual classification of land/accessibility into everyday terms. When asking questions to test people's awareness of access to land there had to be standard, practical circumstances of pursuing activities alongside other land uses to which people could relate and, consequently, reveal their awareness of the situation.

Chapter 3 expands on this problem of visualising categories of access since there is no single criteria that can be used to create a workable, practical classification of units or boundaries of land. Complicated legal and physical variables of the land resource have prevented simple means by which we can describe opportunities.

In order to create some standards for the questionnaire, questions had to be conceptualised from the perspective of Everyman. The boundaries were imagined by having Everyman walk in a straight

line across the landscape. The boundaries at which Everyman might stop to consider whether (s)he had the ability to continue or not, would constitute specific boundaries, perceived or real. These boundaries would demarcate units. Though these boundaries might be the result of the interaction of those seeking access and those controlling it, the main criteria had to be that the boundaries were recognisable from the perspective of the seeker while pursuing recreation. In both Scotland and B.C., divisions of the landscape were made using this way of visualising land categories of access.

Problems in relating the framework to the real world were also found in trying to articulate in simple terms, the complex physical nature of access. Because access to land can be perceived as both linear approaches to land, via trails or footpaths, or as broad approaches across tracts of land, such as open countryside, the meaning of access can become very indistinct. For example, recreational footpaths through farmland could be thought of as a linear approach through land having its own distinct legal structure or it could be thought of as one facility within the facilities of farm land. Individuals are likely to vary in their distinction between, first, the footpath being accessible with farmland being inaccessible off the footpath, and second, farmland being generally accessible because it is visually accessible. As a result, the questions had to be explicit about the spatial nature of access and include 'corridors' as well as 'areas'.

In the same way, the complexity of the relationship of recreation with land uses is in the nature of zoning and containing each land use either through time or spatially. Therefore, questions asked about people's awareness of access over and to land

had to allow for the complexities and various interpretations of integration without restricting the questions to linear access or spatial access.

Visualising access is also complicated by the variety of types of outdoor recreation, the modes of transport used in outdoor recreation and the factor of time and season to recreational activities, each of which can have some bearing on the ultimate relationship that these activities have with other land uses. As a result, the analysis had to be explicit about the type of activity being carried out.

Many of these problems of relating concepts to the real world have developed from shortages in both verbal and graphic vocabularies concerning the concept of access. Words do not exist to describe the various opportunities of access, and the way we perceive the land. Ownership describes the overall legal relationship, but few common words describe the temporary occupation of land for moving in. Furthermore, the loose planning and legal terms of integration, designation and the division of land into bundles of distinctive rights, restrictions or uses have not allowed the development of common everyday terms for the different types of access that they imply. The lack of vocabulary suggests that conclusions can be made about our unfamiliarity with certain spatial concepts and our relationship with the land, through linguistic theory. Language is inextricably linked with our perceptions and if we have no language for objects or concepts it suggests that we have a vague perception or experience of them.

All these practical considerations lent strength to the philosophy of the research in that a deeper understanding of our

movement across the land was important to 'emancipate' the concept. As a result, the semantic and graphical constraints shaped the eventual design of the questionnaires. Since the validity of the results was only as valid as the basic assumptions, it was useless to apply a rigorously-structured statistical method to this task, since there was no statistical basis for selection of categories. The survey, therefore, developed as a qualitative, exploratory survey. It was designed to find aggregate levels of awareness of the issues, different perceptions of access opportunities and attitudes to the issues of access.

The design of the questionnaire was instrumental in developing the conceptual framework. It began a thought process that uncovered many of the factors inherent in accessibility, including: 1) the variables of the land resource itself, i.e., ownership, designation, etc.; 2) the variables of the users such as their personal life experiences, 3) the type of activities and the needs of space and opportunities for each type of activity, e.g., access to caves for caving, access along bicycle paths for cyclists, and 4) the varying attitudes of the landowners or land controllers towards public access depending on philosphical or practical contraints.

The results were intended to provide a structure for the case studies that would tie together the objective data, concerning the legal structure of the different land types, and the subjective interpretations of access to these land types. For example, the legal structure of Crown forest land is described at length in the case studies because of the complicated tenures which bind the land, its resources and access to them. In turn, the results of public perceptions of these lands are intended to throw light on how the

public interpret the complicated legal structure.

2.2.2.2 Format of the questionnaire

The questionnaire evolved to have three distinct parts to meet the stated objectives (see Appendix 1 for questionnaires). The first part contained questions relating to specific survey locations, the second part contained questions relating to general access opportunities and the third contained questions relating to individual characteristics of the respondent (see Appendix 2).

1) Questions relating to Survey Location

Questions 2 to 11 (B.C.) and Q. 2-9 and 11 (Scotland) related to the site and were addressing awareness of access at the site. In doing this ideas would be generated from first hand experience and have an immediacy and relevancy to the respondents. These questions would address the respondents' knowledge of rights of access to the site, and whether they considered access as a factor in selecting sites, alongside factors of convenience, familiarity, scenery, etc. These questions addressed the first and second objectives.

2) General Questions

As well as site specific questions, there were a series of questions unrelated to site but designed to meet the questionnaire objectives (see Section 2.2.2.1). (B.C. Questions 12 to 20, Scotland Questions 10, 12 to 18). Question 16 (B.C.) and Question 13 (Scotland) related to the first and second objectives. The remaining questions of both surveys related to the third and fourth objectives.

a) Question 16 (B.C.) and Question 13 (Scotland)

Respondents in B.C. had the option of ticking the areas they felt they had rights of access to, and leaving the areas they felt they had no rights to. The question did not ask for customary use, or which areas respondents had had access to, it was simply trying to determine legal awareness as one benchmark. The Scottish respondents had the option to tick the areas they felt they had rights to, cross the areas they had no rights to, put an exclamation mark to areas they had rights to but would be uneasy to walk, and a question mark to register that they did not understand the category.

The decision to make the choices black and white for the B.C. survey was based on a trial test, where the option for tolerated *de facto* access was included in a question in the original pilot. The low level of understanding from the 25 respondents led to the final decision to keep it black and white. Conversely, the decision to provide more choices for the Scottish sample was based on the assumption that *de facto* access is recognised in Scotland.

The pilot also established whether the categories of land selected represented ones by which an average individual could assess opportunities and legal rights. The pilot established the working categories for the final surveys.

During the surveys, respondents had little trouble understanding the question or answering it. Choices in B.C. were black and white and where there was confusion or ambiguity in people's mind they still made a specific choice. The confusion was evident at the end of the day because there was little consensus over legal access to these "guessed" categories, i.e., the grey

areas. In Scotland, where land use is less polarised, there was more choice in the form of replies to reflect the existence of customary *de facto* access.

b) Other questions

Q. 20 (B.C.) and Q. 18 (Scotland) were aimed at the latter two objectives by posing hypothetical situations. The questions were composed of a series of scenarios that described restrictions of access to certain lands for a variety of reasons. Questions were then asked for comments on whether people felt these restrictions were justified and in what circumstances.

Q. 15 (B.C.) and Q. 12 (Scotland), again posed a hypothetical scenario of the Norwegian situation of free access to uncultivated land. Respondents were asked what their feelings were on the matter and how applicable this situation was to their own.

Q. 17 (B.C.) and Q. 14 (Scotland) were eliciting personal experiences by asking if people had had any experience of being restricted from certain lands that they felt they had a right to walk on and what their feelings were on the matter.

Q. 12, 13 and 14 (B.C.) and Q. 15, 16 and 17 (Scotland) examined satisfaction with existing opportunities and attitudes to payment for access, directly and through the taxation system.

Q. 18 and 19 (B.C.) and Q. 10 (Scotland) examined the respondents' knowledge of the law in Scotland and of the percentage of Crown land in B.C. to determine some levels of knowledge about two cultural assumptions.

Q. 34 (B.C.) and Q. 29 and 30 (Scotland) presented two scenarios of linear access and spatial access over wild land to find out which scenario they preferred and why. This question was

included to see what individual preferences were for footpaths or free ranging over open land or forest.

3) Socio-economic data

Q.1 and 21-33 (B.C.) and Q. 1 and 19-28 (Scotland) included questions on socio-economic data. To gain some idea of the type of people being surveyed, various questions on their personal backgrounds were asked, including the type of activities they pursued daily, and seasonally. These character profiles were useful in several ways. First, they were a means of determining the range of individuals responding, they helped towards an understanding of why particular attitudes and ideas were expressed and, finally, were used to draw profiles of users in specific sites.

2.2.2.3 Design of the questionnaires

Designing the format and presentation of these questions became an exercise in trying to marry conventional social science methods of questionnaire design and some exploratory graphical ideas. Traditional site-survey and general survey methods were consulted including, Countryside Commission (1970), Dixon and Leach (no date), Elson (1977), Lucas and Ottman (1971), Ontario Research Council for Leisure (1977) and TRRU (1981).

The design of the questionnaire was guided by five principles: 1) to relate as many of the questions to people's own experience and, therefore, have actual experiences from which to derive perceptions and attitudes, rather than ask directed questions of what perceptions were; 2) to maintain brevity so that people did not lose interest and could complete it on the spot in the midst of

their activities; 3) to maintain appeal so that all ages (over 15) and educational levels would be catered for; 4) to be adaptable to two different cultures and case studies; 5) to be relevant to the individual sites.

To make it flexible, the format was designed to be self-administering either with the surveyor present or not. This required a need for an attractive design which would encourage completion and returns. Departing from the traditional questionnaire formats of typewritten sentences and boxes, it was decided to use graphical representations of some of the ideas to aid understanding and increase the desire to complete them. Research on graphical techniques and the use of symbols to convey ideas was carried out, including Arnstein (1983), Booth-Clibborn and Baroni (1979), Dreyfuss (1972), Institute of Contemporary Art (1973) and Herdey (1979).

The use of graphics was found to be a double-edged sword because though graphic aids may help understanding, they also might increase ambiguity or bias the response. In trying to avoid both these pitfalls, the pilot survey was made in B.C. Twenty-five individuals were surveyed and because of their comments some changes were made. Various symbols were discarded because they were either ambiguous or were not aiding understanding. These symbols included those signifying the frequency of participating in activities.

Also in the pilot survey, there was an overly ambitious attempt to test people's awareness of access to land in a variety of different modes of transport, e.g., on foot, on horseback and on bicycles. The complexity of the questions made them impossible to answer and questions were all redesigned to simply address the

question of access to land on foot.

Apart from the symbols, the rest of the design went into making the text handwritten instead of typewritten and having an illustrated cover portraying a landscape in the areas. The use of these illustrations and graphics was included primarily to encourage a high response rate and discussion, to create a new and interesting image, increase readabiliity and reach members of the public who would be resistant or disinclined to complete questionnaires.

The graphic format was also useful in handling the complexity of the issues and sustaining the interest of respondents throughout the relatively long series of questions. The favourable response from the public towards the questionnaire proved the approach to be highly successful in its aims. The following comments are indicative of the response:

> "A wise choice of format and layout for your questionnaire. I wouldn't have bothered doing one of the usual computer print-out types." (British Columbia survey)
>
> "A well formulated questionnaire on a subject which is very important but rarely considered so." (British Columbia survey)
>
> "I had fun doing it" (Scotland survey)

There has not been a great deal of use made of graphical techniques with questionnaires in geograpical research other than indirectly with the use of photographs in environmental perception tests (Saarinen, 1973). The value of using graphics was found mostly in eliciting high and enthusiastic responses. Thus for small qualitative questionnaire surveys there is a good argument for using these graphical techniques.

2.2.2.4 Method of survey

Once the basic format was established various other constraints shaped the design and method of surveying. There were two questionnaire surveys to be designed, one for Canadian users, one for Scottish users. The questionnaire designs were to adapt to the Canadian and Scottish context but cover broadly the same questions. The other reason for doing this kind of user survey was that the time and financial constraints on the survey led to a need to optimise responses. Surveying people in the field was felt to be a more productive way of utilising time and finances in getting some intial responses than door-to-door public surveys (pers com. Kassyk, 1985) or voluntary compliance (Lucas, 1971) as well as allowing for site specific questions.

If the survey was to be conducted in areas where outdoor recreation activites were pursued, either as an informal or formal use of land, further criteria had to be met. First, levels of use had to be sufficiently high and consistent for a survey to be conducted. Second, the area had to be somewhere the surveyor was legally within her rights to be or could secure permission. Third, to obtain a fair representation of individuals that pursued outdoor activities, people from a range of areas and land types should be surveyed. The constraints these criteria placed upon the surveyor led to the selection of seven sites in B.C. and six sites in Scotland, ranging geographically and in terms of the type of area from urban to wilderness.

In B.C., the criteria of the legality of access led to all surveys being carried out in formally designated parks, municipal, regional and provincial. This outcome was reflective of the

opportunities in B.C. and prevented some of the initial objectives from being realised since getting a range of replies that were site specific was impossible. Alternatively, the range of sites on a scale of ownership in Scotland was broad and users were surveyed on private land, urban, regional and country parks, and property owned by the Forestry Commission and National Trust for Scotland.

The selection of the particular sites was made on the basis of the researcher's practical experience of the range of recreational areas and the respective users to be found in these areas. As a result, people surveyed included local residents using areas for short daily walks, active recreationists travelling to areas for specific pursuits over a day, weekend campers commuting from cities to wilderness areas and holiday visitors spending weeks in areas and exploring various opportunities.

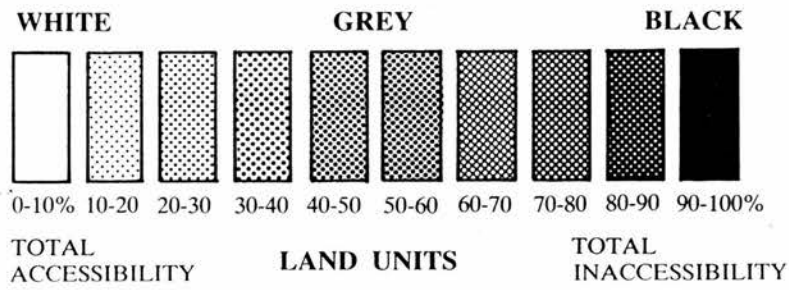
The questionnaire was to be completed by the respondents with discussion afterwards with the surveyor to amplify the data collected in the questionnaire. The method of sampling varied with location and type of population. Two surveying methods were use. In the day-use locations, the next-to-pass cordon method was used and in wilderness/camping locations all users in the area were surveyed between designated times. The combination of the survey method and the number of sites selected in part dictated the number of individuals surveyed, though an upper limit of 300 total questionnaires possibly to be distributed was placed on each survey due to time and financial constraints. In the end, 221 questionnaires were completed in B.C. and 226 questionnaires completed in Scotland.

2.2.2.5 Collation of the data

All questionnaire data was read through and information collated by coding the structured responses for a computer analysis. Comments and anecdotes were recorded by question number and used to illustrate attitudes and perceptions. The only statistical analysis made of the data was frequencies of replies for each question. This was done because of the emphasis on qualitative aggregate answers.

The frequency of replies to Q. 16 (B.C.) and Q.13 (Scotland) were measured for each land category. The variance of replies to some land units and the uniformity of replies to others led to pictures of consensus. The results were analysed in terms of percentage of people assuming rights of access to each category of land. By graphically ranking these percentages with tones that corresponded to the percentage there was a group of land units that appeared black (10% and less), a group that appeared white (90% and more) and a group of varying shades of grey (between 11% and 89%) (Figure 2.1).

Figure 2.1 Black, white and grey areas of accessibility; a cognitive classification



Where the great majority of the sample have assumed rights or lack of rights to specific land categories then these categories are labelled 'white and black areas' respectively. This suggests the clarity and uniformity with which individuals collectively perceive their rights to the land. 'Grey areas' suggest a hazier distinction of rights tending towards either pole of accessibility or inaccessibility. These areas represent categories of land which have split votes, i.e., people do not know and guess either way, or there are varying interpretations of rights to this land across the sample. Either way there is less of an agreement on assumed rights of access to land categories entitled 'grey areas'. The closer these units are to either end of the scale, the greater the consensus of opinion.

The means of testing whether these boundaries/units were relevant to people's experiences and understandings was through the feedback during the administration of the questionnaire. This provided the test for personal assumptions about what people would agree as boundaries.

The classification of the black, white and grey areas relates to a cognitive classification of territory, developed in Chapter 3. The classification into black, white and grey provided a useful and simple way to categorise areas of perceived accessibility and inaccessibility and areas where there is ambiguity. This, in turn, leads to a simpler way of illustrating why there should be strong agreements of interpretation as well as differences in perceptions and interpretations.

The remaining questions were presented in a traditional format of frequency tables with discussion.

2.2.3 Interviews

Specialised knowledge and attitudes of managerial, land controlling and mediating interests and special interest groups were more limited in number and range and could be examined through policy and mandate statements of the institutions or organisations, and interviews with representative individuals.

Interviews were conducted with a wide range of individuals representing managerial bodies, public sector bodies, land administrative bodies, landowning groups, specific land use groups, political groups, recreational groups, interest groups, conservation groups. All of these groups and bodies played some part in the relationship of recreation with other land uses, and were classified into one (or more) of the three elements in the relationship: seeker, controller and/or mediator.

Selection of individuals for these interviews was made to provide as broad a base as possible of corporate views. Again this selection was not rigorously structured but an assessment of key groups, government bodies, individuals and institutions based on prepared lists by governmental and umbrella organisations, as well as personal knowledge gained from involvement with outdoor recreation. The basic guideline was to cover all the controlling interests represented in the land categories of the questionnaires (the list of all individuals interviewed is in Appendix 3.1).

Semi-structured interviews were prepared for each of the three groups with reports and policy documents used to supplement the interviewing notes. Most questions were aimed at practical involvement and experiences with access issues and management.

2.2.3.1 Interviews with land controllers

Controllers were asked a series of questions that covered four main points: 1) their understanding of access and public access for recreation, generally and specifically with regard to their interest and use of the land; 2) their perception of public access as an issue, who were the key actors and what their role was; 3) their practical involvement with public access issues, e.g., policy and problem solving; and 4) their understanding of what perceptions the public had of access to their specific land interest.

Since only representatives of groups were interviewed, individual controllers who did not align with any particular group were not sampled by interview. In a practical sense this latter group tended to be private householders with no other interest in their land but to live on it. This group were indirectly sampled through the two surveys, which included private householders, and through an analysis of the media and literature for general trends and perceptions of public access to private land.

The representatives of these corporate bodies expressed attitudes that stemmed from mandates, policy or corporate opinion. Therefore, these attitudinal questions had already had a form of quantitative analysis made of them by the executive body through polling opinion.

2.2.3.2. Interviews with interest groups

Representatives of clubs, groups and organisations, or lobby groups who in some way sought access to land for recreational use were also interviewed using a semi-structured questionnaire. The

interview was again pursuing four lines of inquiry: 1) their understanding of access and public access for recreation with regard to their recreational interest and use of land; 2) their perception of public access as an issue, who were the key actors and what their role was, e.g., lobby groups; 3) their practical involvement with public access issues, e.g., building trails, negotiating easements, problems and problem solving; 4) their understanding of the attitudes of the controllers and the mediators towards public access. Again, the attitudes of these groups represented a body of opinion from polled members.

These interviews of interest groups in B.C. took place during a time when there was a great deal of attention focussed on access issues and as a result, there was a great deal of material collected because representatives had a raised awareness and grasp of their role in the development of the issues. The results of these interviews are highlighted in the discussion in Section 7.3.1.4.

2.2.3.3 Interviews with mediators

Mediators represent state bodies who have a specific remit, obligation or desire to balance competing, legitimate interests in the land, with recreation. Four lines of inquiry were pursued: 1) their understanding of access and public access for recreation, generally and with regard to their specific area or remit; 2) their perception of public access as an issue, who were the key actors, the protagonists and antagonists and how they viewed their mediating role; 3) their practical involvement with mediating public access issues, e.g., pubic inquiries; 4) their understanding of the attitudes of the seekers and controllers towards public access.

2.2.4 Detailed case studies

In addition to material collected on issues and management of access with contemporary land uses, four detailed case studies in the two regions were made to be used as contributory material to the main case studies, they are integrated into the main text in the sections to which they are relevant.

2.2.4.1 Pentland Regional Park Public Inquiry

In Scotland, a public inquiry over the implementation of a regional park designation in the Pentland Hills was attended. The nature of the inquiry and the precognitions delivered by representatives of groups are recorded and summarised in Section 6.2.2.2.

2.2.4.2 Scottish footpath questionnaire circulars

The results of two questionnaire circulars, that went to planning authorities in Scotland to determine the level of involvement of local authorities with footpath and right of way implementation and registration, were analysed and summarised in Section 6.2.2.5.

2.2.4.3 Access Hotline

In B.C., an Access Hotline was set up between August and October, 1983, by the Outdoor Recreation Council, to determine the extent of public grievances and problems with public access to land. The replies to this Hotline were collected and summarised and included as supportive material to the results of the B.C.

questionnaires in Section 5.6.5.2.

2.2.4.4. Grazing lease issue

In B.C., an issue generating considerable political and social debate over rights to Crown land developed between 1982 and 1985. The issue was regarding the nature of grazing leases and public access to these leased lands. Correspondence of the main actors in the issue and parliamentary debates were analysed in Section 7.3.2.

2.2.5 Synthesis

This data is incorporated in a discursive, narrative account built around the central comparison of the two cases studies.

CHAPTER 3

CONCEPT OF ACCESSIBILITY

3.1 Semantics of access and accessibility

'Access' and 'accessibility' have come to have a range of different meanings to different people. In common usage these vague terms have developed to describe the means, the right, and the opportunity of approach to an object. The terms were typically modified by the object to which the speaker or writer referred, e.g., access to land, access to goods. The definition, therefore, has become necessarily broad enough to adapt according to all three variables: the object being approached, the obstacles that could be in the way of the approach, and the way in which the approacher interprets his approach, e.g., means, right and opportunity are not synonomous and lie uneasily together.

All the various derivations of the rights or means of approaches to objects have come under the heading of access, and this makes the term an inexact and elusive one. Gould described accessibility as

> "a slippery notion...one of those common terms that everyone uses until faced with the problem of defining and measuring it" (Gould, 1969, p.64).

In principle, access is a simple idea to grasp, in practice the complexity is not easy to grasp. Since we are a world of increasing objects, increasing subjects and increasing interpretations of means, rights and opportunities, the complexity increases and the semantic boundaries of the term "access" constantly shift to embrace more manifestations of that term.

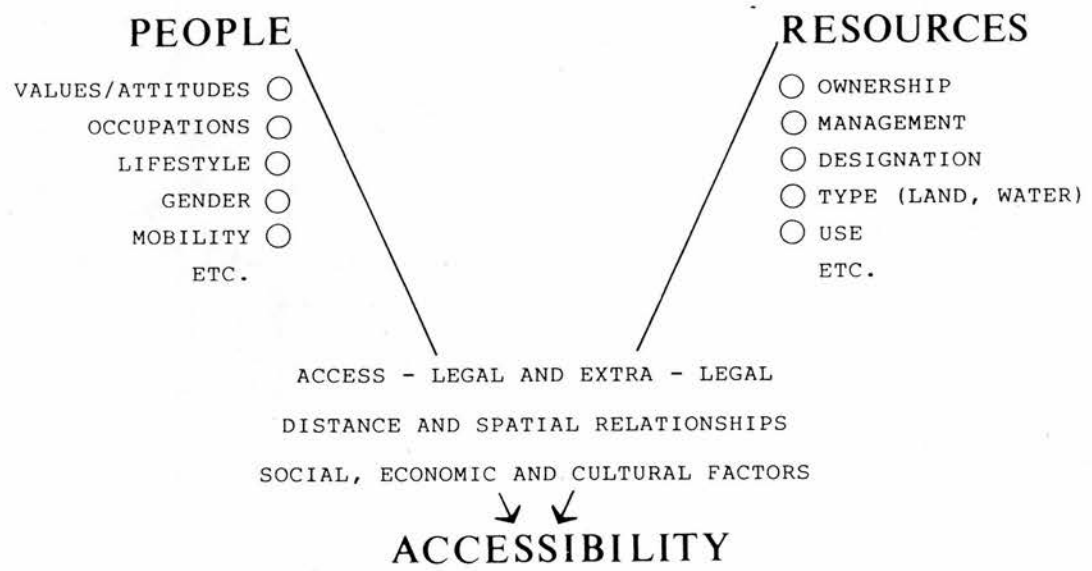
As discussed in Chapter 2, in the context of the research

(2.1), the concept of "accessibility" has been used in geographical research to examine social and spatial opportunities to objects, i.e. resources. The concept is flexible enough to accommodate the particular set of circumstances that access to land for recreation creates. It becomes a useful word to describe the relationship that occurs between interests in land, when access as a legal term is separated from other rights inherent in ownership, and other facilities inherent in recreational land use.

3.2 Development of the concept and semantic problems

The development of this concept followed a similar path to that of the Centre for Leisure Research (hereafter CLR) on their Access Study. They define accessibility as "the extent to which rights of access are exercised in a particular time or place...rights of access are merely a sub-set of those factors which ensure accessibility (social, economic and cultural)" (CLR, 1984). Access is defined as "legally or conventionally defined rights of entry or use" (CLR, 1984, p.15 after Ventris, 1979). Accessibility is described in simple terms as the broad dynamic relationship between people and resources with access as one factor in the relationship (Figure 3.1).

Figure 3.1 The relationship between access and accessibility



Source: Centre for Leisure Research, 1984

Breaking the definition down into component parts the CLR have employed the term 'accessibility' to embrace the object being approached as resources of land and water, the subject as the general public and the interpretation of the approach as a 'right'. Accessibility is the spatial extent of the public exercising these rights, but what leads or constrains the public to exercise their rights is the multivariate factors of people's values, occupation, lifestyle, gender and mobility, and the ownership, designation, type and use of land.

This conceptual diagram describes the factors inherent in the relationship between land and people and is developed within this study, however, there are various differences in the context for which the framework was developed by the CLR and the context of this

study.

The CLR were commissioned to develop a framework for the English and Welsh countryside. This study has a broader regional perspective taking in the relationship between the urban and rural/hinterland areas. The first semantic difference, therefore, lies in the description of the land resource. The terms 'rural' or 'countryside' are not used to describe the landward areas of B.C. McCann (1977) develops the term of 'hinterland' in Canada to describe the vast land resource outside the urban areas. So with two different regions, there is a need to use the term 'land resource' in its broadest meaning, i.e., it is used in this study as a blanket term that refers to both the rural and urban areas of Scotland and the urban and hinterland areas of B.C., and includes land and water bodies.

Because of the cross-cultural aspect of this study, the semantics of access itself have to be necessarily broad in order to take in the differing nature of access in the two regions. The CLR definition of access, as a 'right' of entry, constricts the flexibility of the term. Access is understood, in common usage, as a 'means' as well as a right. Similarly, it is often considered only indirectly through related concepts like public land or parks. In legal terms access can exist as a right, legally *(de jure)* and traditionally *(de facto)*, but can also exist as a lack of restriction or a negative constraint on ownership. The difficulty in semantics should not be overlooked by specifying access as only a right, since many of the new planning designations for integration of land uses involves not a right of access but a removal of a right of occupiers to restrict access. 'Access' is left as a simple

generic term so that it can be viewed in light of two different cultural and social contexts.

Finally, the CLR have developed their conceptual framework to provide a means of relating factors that influence accessibility back to the perspective of the mediator. This is in keeping with their objectives, since it is for the Countryside Commission of England and Wales that the research has been commissioned. The different context of this study has led to different objectives for the framework so with these considerations, it has been adapted to and developed further to the particular objectives of this research.

3.3 Objectives of the conceptual framework

The objectives of the framework are: 1) to expand on the variables of the land resource and people; 2) to identify the broad factors which might influence the variable nature of people and the land resource in their relationship with each other; 3) to provide a simple way of classifying accessibility that would be useful to the objectives of the study; 4) to provide a way of visualising the change and continuity in the use and tenure of the land and; 5) to provide some labels to attach to different attitudes within each of the three different groups of people and the way that these different attitudes may influence the relationship.

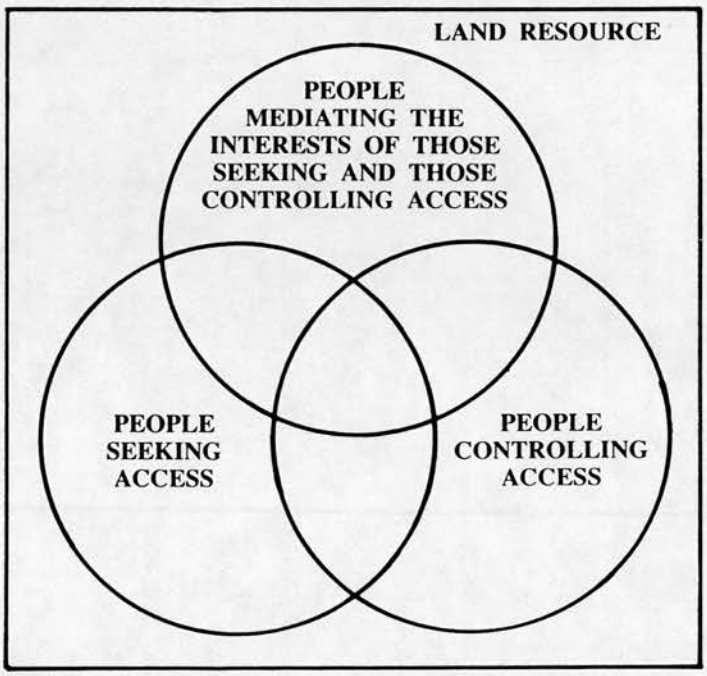
3.4 The conceptual framework

The framework is devised around the four basic elements, as identifed in the definition: seekers, controllers, mediators and the land resource. 'Seekers' is used interchangeably with 'users' throughout the study but is introduced initially to focus on the

aspect of 'seeking' access to land with recreational use. Controllers is used as an umbrella term for all individuals or agencies (private and public) in possession and control of land. In Scotland the term is used interchangeably with 'landowners' since the greatest proportion of land is in in the control of private landowners. In B.C. the term 'controllers' is used when referring to leaseholders, or managers of Crown land as well as private land-holders. 'Mediators' refers to the State appointed authorities or agencies who have a remit to balance the interests of the recreational users with other economic interests in land. 'People' form the first three elements or groups, with the land resource being the fourth element. The land is the objective element which influences and in turn is constructed by these different groups of people. Given these broad typologies of people, the assumption is that these groups will interact between themselves and with the land resource, influencing the patterns of accessibility (Figure 3.2).

The following sections examine the critical factors of the relationship including: the variables of the land resource such as access, landownership and the physical features; and people's attitudes, perceptions and behaviour towards these aspects of the land resource.

Figure 3.2 The inter-relationship between the land resource and people



3.4.1 The land resource

The land resource is structured physically and legally and these structures place constraints on the way the land is used, occupied and perceived. These constraints may be perceived ones, such as the fear of trespass, or physical constraints such as the existence of a wall. The two are interrelated through the variables of land use and legal structure. 'Land use' suggests "the visible expression of the interaction between landownership and the structural base and systems (capital, technology and knowledge)" (Parry, 1980, p. 17). The variable of legal structure creates the invisible means for the people who control the land to restrict or provide access. Both are the cause and means by which people

manipulate the environment to protect interests (Figure 3.3).

3.4.1.1 Variables of the land resource

The variables of the legal structure of the land base include ownership, and the subset of divisible rights and constraints of ownership: possession, management, designation, and rights of access to the land. These variables are briefly defined below, while Chapter 4 deals with their historical and legal origins.

The variables of the natural physical landscape include its natural elements of terrain, water bodies, vegetation, wildlife and climate. The variables of the manmade physical landscape include its built elements of houses, roads, bridges, walls, fences, etc.

Each of these variables is dynamic and therefore sits on a continuum that is defined at both poles by its contrasting impacts on opportunity. For example, ownership might enhance opportunity, depending on whether it is public or private ownership.

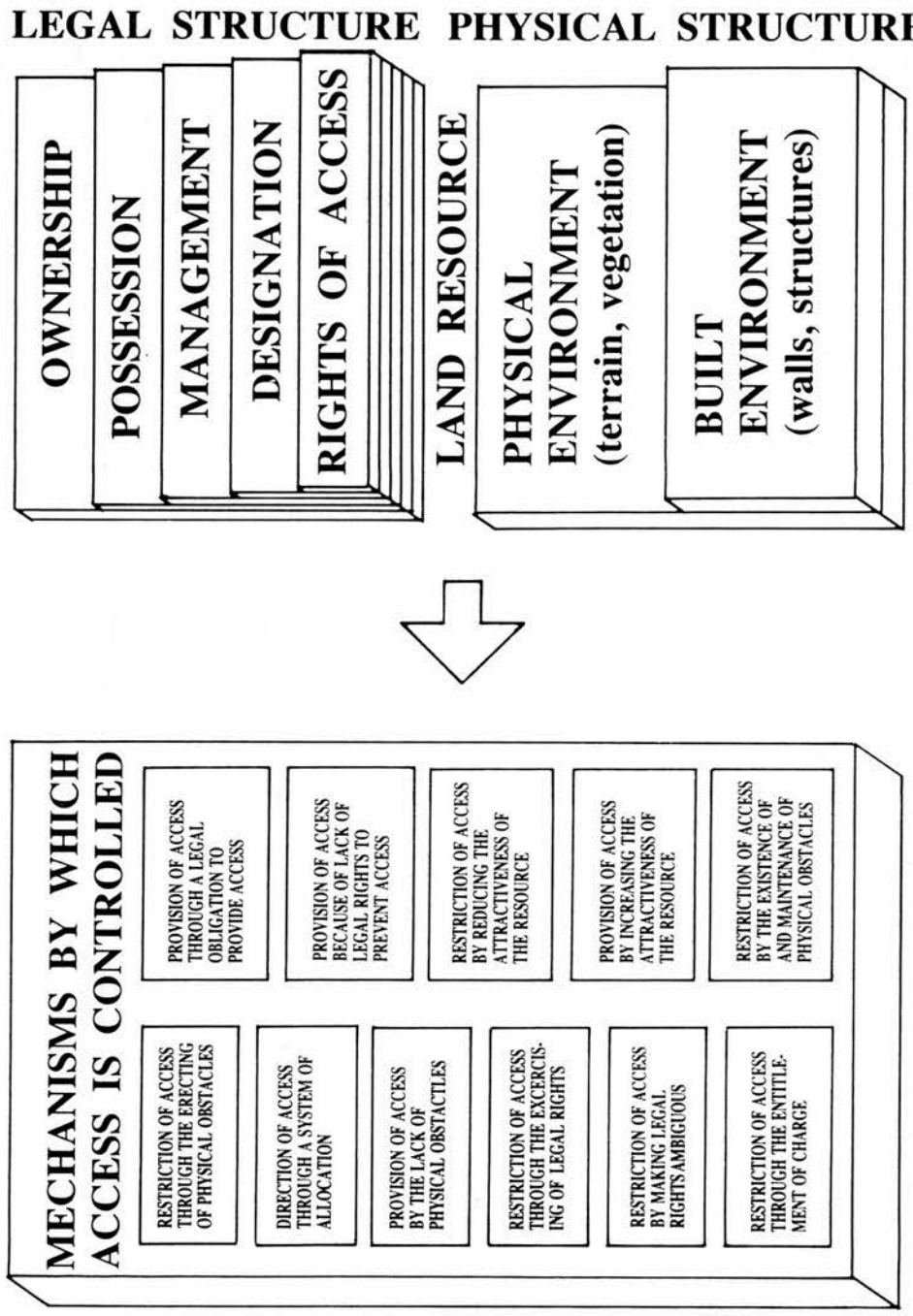
1) Ownership

Ownership influences opportunity through the legal mechanism of allocating real rights to the owner. These may be rights to change the resource, sell the resource, rights to possess the resource and defend it from trespassers or rights of access to that property. Collective rights associated with public ownership may in fact be ownership by the Crown with certain public rights granted to the public (refer to Chapter 4).

Ownership describes the legal relationship of a person to the land. Therefore, patterns of accessibility are defined positively by collective ownership or by a right of access tied up in proprietory rights. Access is defined negatively by the proprietory

right to exclude.

Figure 3.3 Variables of the land resource and the mechanisms by which access is controlled.



2) Possession

While ownership describes the legal relationship of the land to a person, the nature of the possession of the land is regarded as a fact alone. In gaining entrance to land, the variable of possession can be more critical than the variable of ownership, e.g., a possessory right to land may supercede an owner's proprietorial rights to land in being able to exclude others. Possessorial rights describe the rights of exclusive use and enjoyment to the person that is in possession of the land. In other words, possessory rights are what are held by tenants and lessees of land as well as owner/occupiers. These occupiers of land typically have the power to exclusive use and enjoyment and can restrict access. Therefore, like ownership, the possession of land can both positively and negatively influence opportunities.

3) Management

Management provides a third tier of influence on opportunity. The legal structure of management is less distinct. First, management can exist or not exist. Second, management can be legally defined through a relinquishing of the proprietorial right of management to another party, be controlled by the owner or by the possessor, or be an informal agreement not bound by law between owner/possessor and manager. Whatever the managerial source, certain options are available to management to ensure maximum benefits, appropriate use or whatever ideology that the controller is demanding of the management. Management can be in charge of such activities as levying fees, erecting barriers, allocating the resource to different uses or patrolling the use under proprietorial

rights, bye-laws, statute, or local planning laws.

4) Designation

Designation is closely linked with management in that it is a restriction on ownership, which has the potential for influencing access. Designation can be placed on private land or land vested in the public by a governing body. Examples of these legal restrictions on ownership may include constraints on the owner/possessor to stop trespassers or to cease from certain activities that may damage the resource. These constraints may be legally enforceable and imply a conveyancing of rights or be informal arrangements. Designation may influence opportunity by the nature of the restrictions on the ownership, e.g., designation of a nature reserve may carry with it a prevention of damaging activities for that particular habitat such as public access. Designation is a function of the State and law courts, and can include State ownership of land for public use, such as parks. Terminology describing these restrictions includes: agreements, convenants and easements.

5) Rights of access

A right of access is one right flowing with proprietorial rights which can be retained by the owner or sold or prescribed by others. Rights of access can describe both a public and a private right that the law would define through various means. The law defines four types of rights of access: a single right of way across land that is owned and possessed by the public, a single right flowing with proprietorial rights, a single right flowing with possessorial rights or a single right flowing with managerial

rights. Rights of access can exist for specific reasons or can be general. For example, a right of way for walking but not riding a horse can exist, or a right of access can exist for some individuals but not others, e.g., those who have paid membership fees or have servitudes.

A right of access, specifically for recreation is quite a new development in the eyes of the law, so some recreational uses are considered subordinate to the primary use, for instance, commercial access on sidewalks/pavements. A right of access can be spatially defined as a linear route or an areal block. Where no legal right exists but passage is still made across the land usually through the tolerance of the landowner, possessor or manager, access is referred to as *de facto* access. Tolerance depends upon a whole range of social and legal factors including the interpretation of the law of trespass and attitudes to the use.

Rights of access influence opportunities because they define areas where individuals may have no legal constraints barring their access. Knowledge of these rights may vary from individual to individual, some knowledge may only be obtained through clues in the physical landscape, like signs indicating a right of way.

6) Physical and built structure of the land

The variables of the physical and built structure of the land include such things as cliffs, rivers, houses, fences, signs, equipment and vegetation. These need little clarification of definition except in terms of how their existence, distribution and appearance influences perceptions of opportunity. Land uses that are very intensive, for instance arable farming, will have evidence

of this intensive use through the existence of fences, fields and farm buildings distributed over the farm unit. On the other hand, land may appear to have no use being made of it and the variable influencing access might be the dense vegetation that surrounds it.

3.4.1.2 Mechanisms for controlling accessibility

These variables can be manipulated by the controlling or managing interests in the land to influence the public's judgement of opportunities by various mechanisms of restriction and provision. Examples of mechanisms (as in Figure 3.3) include: 1) the restriction of access through the existence and maintenance of physical obstacles; 2) the provision of access by the lack of physical obstacles; 3) the restriction of access through the exercising of legal rights; 4) the provision of access because of lack of legal rights to prevent access; 5) the restriction of access through the legal entitlement to charge for access, e.g., ferry tolls, entrance fees; 6) the provision of access through a legal obligation to provide; 7) the direction of access through a system of allocation that hides parts of the land resource or has competing attractions; 8) the restriction of access through the deliberate erecting of obstacles; 9) the restriction of access by reducing the attractiveness of the resource through the type of land use; 10) the restriction of access by making legal rights ambiguous; and 11) the provision of access through increasing attractiveness/amenity of the resource despite there being no legal obligation to.

Some of these mechanisms rely on the physical barriers, some on the perceptual barriers. These mechanisms are used collectively to

shape the possible opportunities by and for society to gain access to the resource. Individual knowledge gained through mental processes like perception, beliefs and cultural conditioning then selects the opportunities. This process of selection ultimately relates to the variable nature of people in their behaviour and the patterns of use. Within the two case studies, these mechanisms are identified as they are put into practice by land controllers or the State, through the opportunities that the law and the land use present.

Because the accessibility of the land resource is influenced by all these legal, physical and perceptual variables, there is no single criteria in which to classify areas of accessibility in a concrete fashion. The following section examines the problems of developing such a classification.

3.4.1.3 Problems with a classification of accessibility

The task of classifying accessibility within a concrete geographical area is difficult because of the nature of access. Access can be linear or across an area; it can be influenced by the land use, designation, management or tenure. One means to classify, therefore, is to identify the boundaries which have resulted because of the interaction between the three groups of people. Though individuals may perceive their rights or means of access at a boundary differently, there is some physical geographically identifiable boundary where those sorts of decisions to restrict access or seek access go on.

The development of recreation within the existing structure of land uses and land tenures has created frictional interfaces where

land controllers and seekers meet. These boundaries are socially constructed and change due to the way the three groups inter-react. These boundaries surround physical areas of accessibility which form the context in which the case studies are discussed.

A system for naming the different types of areas was borrowed from work done by ethologists and behaviourial geographers, and is based on the analogy of animal territoriality. Territoriality is defined as

> "the motivated cognitive and behavioural states that a person displays in relation to a physical environment over which he wishes to exercise proprietorial rights and that he, or she with others, uses more or less exclusively" (Gold, 1980, p.80).

He goes on to state that territoriality has a "...set of mechanisms which serve particular goals in the spatial environment" (p. 80) such as privacy, social dominance, prevention of crowding, security, attachment to place and familiarity. When the goals differ, for instance if there is personal involvement, or the area is central to everyday life or use is only temporary, different types of territory are defined. Using this territorial analogy, Altman (1975) devised a classification of territories, which is described below.

3.4.1.4 A cognitive classification of accessibility

Altman uses three classifications of territory as described below:

1. Primary territories "are owned and used exclusively by individuals or groups, are recognised as such by other people, are controlled on a relatively permanent basis and are central to the day-to-day lives of occupants, e.g., the home" (Gold, 1980,p.89).

The criteria for judging primary territories is that the rules are clear about the exclusiveness of the territory.

2. Secondary territories "are less closely identified with individuals and are less exclusive. They cover a wide range of different spatial environments ranging from institutional settings such as hospitals, prisons and college halls of residence to the areas to be found around people's homes. Some secondary territories have a simultaneous blend of public or semi-public availability and control by regular occupants.... Other types may have rules that limit access and occupancy.... Secondary territories are therefore a bridge between the total and pervasive control allowed to occupants of primary territories and the free availability and access that characterised public territories. Secondary territories because of their semi-public quality, often have unclear rules regarding their use and are susceptible to encroachment from a variety of users...they are a bridge between the total pervasive control of primary and free access of public territories" (p.90).

3. Public territories "have a temporary quality and may be used by almost anyone provided that they conform to social norms and standards, not owned by individuals but may be claimed by physical occupancy for a short time, e.g., park benches, ...tenancy of such places is understood to be temporary" (p. 90).

This classification can be adapted to a discussion of recreational access by first, considering the implications of territory to recreational space, and second, considering the boundaries that define these territories. For example, primary territory would have no or very little means of approach for the seeker. The rules would be clear across a wide range of society

that it is inaccessible, e.g., intensively used land, homes and immediate gardens. Public territory would have ample means of approach and entry. It would be clearly accessible, e.g, signed public parks, pavements. Secondary territory would constitute the areas where the rules were not clear. The opportunity to use secondary territory for recreational use may be slightly ambiguous, e.g., graveyards, semi-public land like state forestry, or redundant derelict land.

These three categories represent clear interfaces. Whether the rules are strong or weak the boundaries exist and there is an assumption that a relationship exists with the other interests in the land.

3.4.1.5 The territorial analogy

This classification is useful for the following reasons. It offers a simple way of visualising different types of accessibility because geographical boundaries can be afixed to these different territories. Second, the analogy provides some explanatory ideas for the goals and mechanisms that those owning land may have and use. Third, it provides some explanatory ideas about the way people may perceive the land resource, and finally, it provides a way of thinking about the nature of integration and change of recreational land use within the structure of other land uses.

The concept of secondary territory or grey areas provides scope for understanding why interpretations and perceptions of access vary. Where the rules are unclear and no distinct goals of privacy through exclusion are being pursued by the controllers of that land, the perception of access becomes dependent upon factors distinctive

to the individual. It is also within this category that there is the potential for visualising the integration of land uses. The mechanisms by which these different groups operate at these boundaries and the way in which they view them are applicable to recreational use. For example, seekers who like to have clear rules in which to participate may avoid secondary territories, while seekers who are risk takers or enjoy challenging old rules may seek out secondary territory, especially if their needs are not met within the spectrum of public territory.

The analogy can be extended within the ecological model by considering the territorial mechanisms of pioneering, risk taking, boundary creation, boundary defence and seasonal and daily variations of territory with the varying goals of prevention of crowding, security, social dominance or symbiosis. These mechanisms help toward an understanding of why boundaries may be established, why cognition varies, and where conflicts occur as they change.

A variety of different processes of change can be visualised through the analogy. Users' interpretations of the law may change and, therefore, one land area may change from one territory to another in their perceptions. Similarly, land controllers may change their land use practices which would move a land area from one territory to another. There also might be a change in the law, which would move certain land areas out of one category and into another. Examples of this last process may be if the definition of a public place were to take in all mountain tops, or the definition of a trespasser were to exclude users, or certain designations were to override possessory rights to prevent trespass.

Again points of conflict can be predicted with these changes.

Where people assume secondary territories as public territories, conflict may occur between the users and the controllers. Land controllers of secondary territories can lose their tolerance of recreational use and change the land to primary. Public territory can become secondary or primary through a change in the legal structure and again cause conflict because of a loss of opportunities. If public territory is blocked by primary territory, then users challenge the controllers rights to block that territory.

Many examples of change and friction can be imagined using this analogy, and can suggest the many complex levels in which the relationship is dynamic. For example, an individual's altered interpretation of the law may shift one small tract of land into a different category of accessibility. Conversely, a change in the nature of a land use may shift all tracts of land, with that land use, into a different category of accessibility. These different levels of change are explored within the case studies.

The usefulness of the analogy is based on the assumption that accessibility can be adapted to the concept of territoriality by introducing the groups of seeker and mediator of land for recreation with the associated legal and physical dynamics of that relationship.

3.4.1.6 Application of the classification to the case studies

The process of ascribing physical land tracts and corridors in both case studies to cognitive categories of accessibility is described at length in Chapter 2, Section 2.2.2.1 (Questionnaire Method) since one of functions of the questionnaires was simply to identify the cognitive 'areas' of accessibility in Scotland and

B.C. In short, it was a subjective selection of different tracts of land and corridors in the two regions based on experience and established stereotypes that the public would be able to judge as being accessible, inaccessible, or unclear.

The terminology of primary, secondary, and public territory was adapted to a classification of respectively, 'black', 'grey' and 'white' areas of accessibility to reflect the relative degrees of accessibility, as shown in Figure 2.1.

3.4.1.7 Summary of the land resource

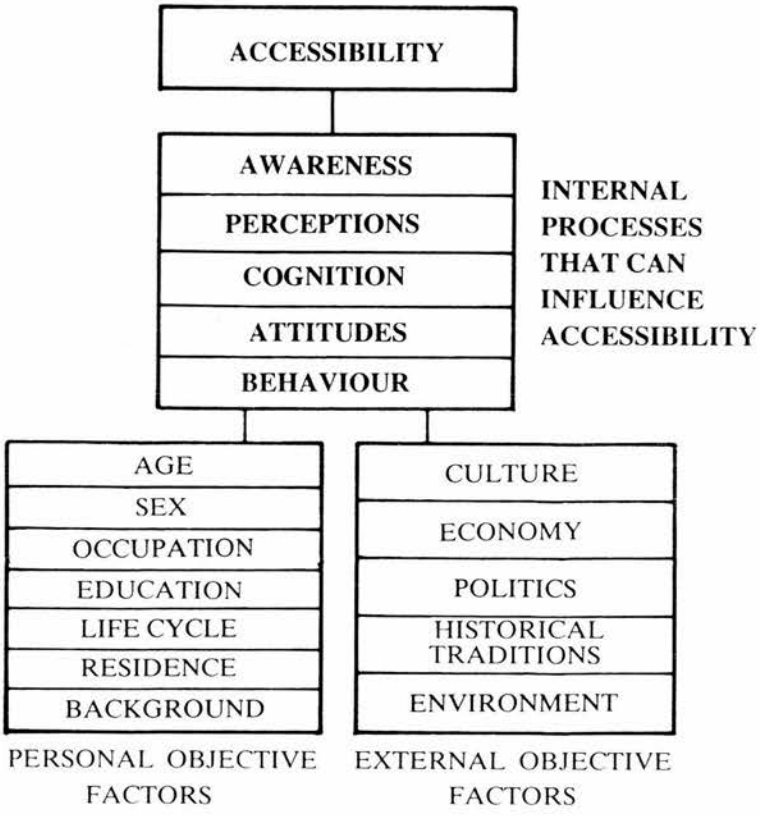
In summary, the land resource can be seen as chiefly a medium through which vested interests in the land resource regulate their interests and others including public access. The use of a territorial analogy has been used to try and simplify the complexity of these relationships. The cognition of accessibility by people throws some light upon how and why these geographical spaces have formed and why. The following discussion looks at the other part of the relationship, people themselves and the variables that influence their cognition, motivation and attitudes.

3.4.2 People and accessibility

From the preceeding discussion, it is evident that people influence the relationship in a variety of inter-related ways: their use and control of the land, their recreational habits, their attitudes to the resource and people, their perceptions of rights of access and their awareness of the factors in the relationship, including access, the environment and landownership. The relationship is inter-related and complex; the variables of

behaviour, attitudes and perceptions all have some influence on accessibility of the land, yet behaviour and cognition are themselves dependent upon, on the one hand, a sub-set of personal characteristics of age, gender, etc. and, on the other, the broad environmental, socio-economic and cultural factors (Figure 3.4).

Figure 3.4 The internal processes through which people influence accessibility

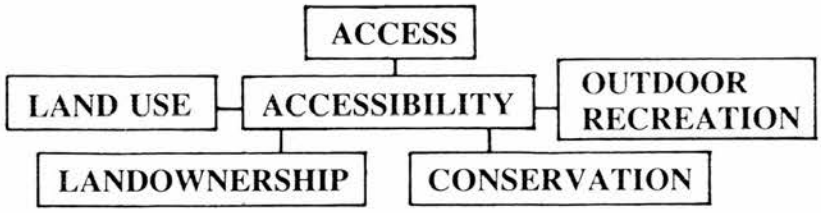


This following discussion focuses on the role of attitudes, perceptions and awareness in influencing accessibility.

3.4.2.1 Attitudes, perceptions and awareness

Within the context of the case study and the questionnaire surveys, a range of attitudes are revealed when access issues emerge. Within the different groups of users, interest groups, managers, landowners, State authorities, etc., attitudes are expressed towards aspects of the relationship, and these tend to be the concepts of landownership, land use, recreation, conservation and occassionally access itself (Figure 3.5).

Figure 3.5 Factors of accessibility towards which attitudes are formed



As illustrated in Figure 3.5 these attitudes can be theoretically broken down further into the cognitive components that create them: the perceptions, feelings, knowledge, and values that add up to the "collective feelings (affects) and beliefs (cognitions) which dispose people to react in a certain way" (Schiff, 1971, p.8). Perception being "the impression one has from a set of physical stimuli" (Schiff, 1971, p.7), and awareness, being

the first aspect of perception.

By looking more closely at these components of attitudes, it is possible to highlight two important points. First, cognition of access is a fundamental factor because without awareness and knowledge of access as a distinct object, people are not able to form perceptions of it nor attitudes and, therefore, their behaviour is dominated by attitudes to other related things. The argument here is that access and accessibility are typically not perceived as distinct concepts; attitudes that come to bear on the outcome of accessibility are formed by attitudes to the related concepts of landownership (and legal principles), recreation (and the social responsibility for provision of recreation), conservation and the environment itself. Access issues often result because groups or individuals are not talking about the same concept, but two related concepts to access, e.g., recreation and ownership.

Whether attitudes to ownership or recreation, these variables will ultimately influence both the nature of the demand for recreation and of the supply of land. However, the different groups have different opportunities and goals to express these attitudes in their actions and relationships. Landowning attitudes to the way land should be used will be important in how they operate the mechanisms for controlling access. Similarly, perceptions of access by users will be important in determining where to go. Attitudes of the public in general towards recreation will be important in how the mediating interests assess the value of access and how it is to be provided.

Section 3.4.1.5, on the territorial analogy, has already introduced various explanatory devices for behaviour or perceptions

through a system of meeting goals, e.g. privacy or protection to motivate different groups to respond in the relationship. The questionnaire surveys (Chapter 5) provide empirical data on the great range of factors which influence people's perceptions or/and attitudes towards the related concepts of access. The following discussion looks at the factors influencing attitudes towards access by controllers of land and mediators.

3.4.2.2 Attitudes and perceptions of land controllers

Individuals who control land are bound by the pressures placed on them first, by the seekers through use, attitudes and perceptions, second by the mediators and third by the legal and physical infrastructure of the land they control. The variance in attitudes depends upon how much they see the fragmentation or restriction of proprietorial rights for recreation meeting their objectives. Their objectives may be purely economic or philanthropic depending on how they interpret the law and the values they place on the land and public recreation. To classify the controllers would be through the degree of interaction and awareness of the relationship, and also the value they place on the relationship.

For controllers who perceive no accruable benefit (philanthropic or economic) from formally or informally entering into a relationship with seekers and/or mediators, their degree of interaction may be low or involuntary and the type of interaction may be one of conflict.

For controllers who perceive some accruable benefit from formally or informally entering into a relationship with seekers

and/or mediators, their degree of interaction might be high and the type of interaction might be creative and facilitating.

Middle-of-the-road attitudes might simply be an acknowledgement of access within the working environment, with neither benefits nor losses to be accrued by the integration of recreation into the existing land uses.

The second variable of values placed on the land will vary between short term interests in production and individual consumption, whether it is maximising production through integration or single use, to those values associated with custodianship and achieving a balance between livelihood and social obligation.

3.4.2.3 Attitudes and perceptions of mediators

Mediators are in essence societal/institutional interests which evolve to balance controlling and seeking interests. Their development itself, as institutional bodies, is dynamic and in response to a need to resolve conflicts and imbalances. The recognition by public bodies of access as an issue to deal with is critical in itself. Within the sphere of issues that a government's attention is drawn to, access issues can be either be ignored or recognised. Controlling interests can sway governments to a state of non-decision making, or the governments themselves with large controlling interests in industrial use could avoid consideration of the issue. The first means of describing government involvement, therefore, is through the degree to which mediating powers are created within the State. Factors influencing the mediators are the pressures of the controllers and the seekers, which they seek to balance within their legal, political and economic constraints. The

categorisation of the range of attitudes held by mediators is made through the nature of their involvement.

A mediating body might exist to impose constraints on ownership for the benefit of enabling access to certain areas. These constraints might require financial compensation and the mediating body will then have to balance payments through taxation. Likewise, a mediating body might exist to create opportunities through ownership of land or to enable controlling and seeking interests to develop a means of balancing interests.

The nature of the involvement of the State may lie somewhere along a continuum of public and private sector responsibilities. At one end there will be straight managerialism where the public sector makes all the formal provision. In the middle, there will attempts to balance the responsibility between the private and public sector in a pluralistic system and, at the other end, the State may make no formal provision and leave access a commodity for the private sector to develop.

In many instances, controlling and mediating functions might merge when land is in public ownership and a combination of controlling and mediating attitudes may come into effect.

3.5 Summary of concept of accessibility

Accessibility is a 'slippery' concept but it essentially describes the broad relationship that emerges between people and the land when people seek access to land. It is hypothesised that broad cultural rules exist indicating within the land the places where people can move in and out of and the places where people cannot. In areas where these rules are not clearly spelt out people bring to

force their individual perceptions and attitudes towards the land to best suit their interest, whether it is to have a pleasant walk or defend their livelihood.

The following chapter traces the historical origins of rights to walk and rights to protect property and the interrelationship of the two. It then examines the application of these early principles in the evolution of access and the uneasy relationship that has come to exist between seekers, controllers and mediators.

CHAPTER 4

THE HISTORICAL AND LEGAL EVOLUTION OF ACCESS IN SCOTLAND AND B.C.

4.1 Introduction

The discussion on the historical and legal evolution of access within the two case study areas is structured chronologically and by region. The first section explores the historical development of principles associated with land tenure and ownership, the second section discusses the application of these principles in the eighteenth and nineteenth century in Scotland, prior to the growth of recreation as a land use. The final section begins with the adaptation of these British principles in B.C. and follows the development of the pattern of land tenure and use until the appearance of outdoor recreation in legislation.

4.2. The development of the historical principles concerning the possession and ownership of land

The vocabulary of the eighteenth and nineteenth century expanded exponentially in the subject of landownership and possession. The manipulation of land, rights and interests in land was made through legal mechanisms of trespass, regalia, prescription, injuria and servitude that defined and justified actions and defences of land occupation.

The following paragraphs will provide some background and working definitions of these principles and concepts, drawn from a variety of sources including, Rankine (1909 and 1916); Card *et al* (1981); Gloag and Henderson (1977); Keith and Clark (1978); Maitland (1960); Scottish Law Commission (1981) and Marshall (1982).

4.2.1 Origins and definitions of the concepts of possession and ownership

4.2.1.1. Possession

The most important principle with respect to access is possession and its remedies. There are two possessory remedies, the first remedy enables individuals through law, to define those areas of land where no public right of access exists except by permission or licence of the owner. If use is made otherwise it is *de facto* access. The second remedy enables individuals through law to define those areas of land where a public right does exist, either linearally or spatially. There are variations and mediations on these remedies with reference to recreational access which will be discussed in the following section, but this summarises first principles.

The first evidence of the concept of possession in Britain is through the popularised version of classical Roman law adopted by the church in the tenth century. The vocabulary included the concepts of possession and ownership and the rights and privileges that flowed with them. These concepts had developed in the highly-structured society of the Roman Empire. They articulated the inclinations to inhabit and protect, to play and to wander on the surface of the earth which had been translated into powers or privileges given by the law, including rights to walk. Possession was at the root of the Roman way of thought. The very essence of possession was exclusion and through the process of holding land and excluding others, the movement of others could be restricted.

The concept underwent great adaptations and interpretations in Britain throughout the next six centuries. By the seventeenth century, feudal principles had penetrated well into Scotland and institutional writers had come to consolidate the principles in the laws of Scotland. Their influences were from the continental school and they had the intellectual opportunities to delve into the old Roman writings and derive the principles first hand. The setting up of the General Register of the Sasines in 1617 established a register of possession and the terms of prescription and investment or legal entitlement to land.

By the seventeenth century a coherent view can be seen of the interpretation of possession in written form as legal scholars are beginning to write up cases that illustrate how public access is influenced by legal constraints. By the nineteenth century case studies are touching on rights of access for recreation in law. These cases will be discussed later.

The concept of possession in seventeenth century Scotland varied somewhat from the original Roman concept and indeed even later Roman interpretations. The Romans intended the concept to be a fact, a fact of holding or having a thing in the possessor's control. Inherent in the fact of possession were two rights: 1) the right of the possessor to resist encroachment or disturbance of his possession and the right to recover it when lost, i.e., possessory remedies like *interdicta* (see 4.2.2.1); 2) the right to acquire/secure property in what did not originally belong to the possessor by holding it undisturbed for a certain period of time on an adequate title, i.e., the right to prescribe land.

These principles can be translated into modern ideas of rights

to prevent trespass and prescriptive rights. Within the relationship of seeker and controller, these possessory remedies are used either to control access or to acquire access according to their interpretations by individuals with different interests in the land. These interpretations have historical roots and are bound up with the interpretations of ownership.

Subsequent Roman lawyers interpreted possession as a 'real right' or the power given by the law of disposing of things like land or rights to pasture. This meaning was what came to be understood as 'ownership' and 'property' in the feudal system. Since the Romans had no formal definition of ownership, only a process of *rei vindicato* where an owner could claim land against its possessor, the term became blurred. This misinterpretation is siginificant, it is not difficult to confuse the two concepts, which is indeed what contributes to conflicting claims and rights in twentieth century arbitrations over possessory rights vs. real rights of absolute ownership.

The influence of the feudal doctrines whereby all things and the land in the kingdom were ultimately in the ownership of the Crown but granted in feu to subjects, necessitated a distinction between the fact of holding something and the legal relationship that granted power to dispose of it. Possession, therefore, came to be used in Scots law in its original definition. It was a fact, its essence was exclusiveness and it was employed as a system to maintain the best uses of the land.

Possessory judgement was available to the possessors of things whether they had a legal title or a lease (or a *bona fide* intention to go through a prescriptive course of action to gain legal title

[see 4.2.2.3]). Possessory judgement was available to an individual with another individual or with the public at large, in the form of a servitude or right of way.

The significance of possessory remedies being available to the possessor not the owner of the land or right was that it was the **visible** occupiers and users of land that had the rights of excluding others from their land not the invisible holder of the property title. In this regard, possession not ownership has become the principle that negatively (through exclusion) or positively (through prescription) defined rights of access; an important fact in two countries that have both had histories in which the owner has not necessarily been the occupier of the land. This is also important with respect to lands that are in public ownership but in the possession of an individual. If people perceive their access in terms of what signs the landscape gives, then visible occupants can act as gatekeepers.

The distinction between possession and ownership is sometimes blurred, so a clarification is included here to identify both concepts. Possession embodies the concept of territoriality, e.g., a behaviorial state, whereas ownership/property is a legal relationship of an individual with a thing. All instances of having or holding a thing may or may not have a legal relationship, e.g., holding something may be an action aimed at acquiring a legal relationship to that subject. Similarly, ownership does not imply the fact of possession nor vice versa, e.g., when an absolute owner grants exclusive possession to a tenant they lose possession and though the tenant may be said to have limited ownership they do not have real rights to the property, i.e., the right to use and dispose

of the subject as their own.

4.2.1.2 Ownership

Ownership is important as a means of distinguishing land categories and rights, by the legal relationship that exists between the land or rights and the individuals, public or Crown. The definition of ownership by Erskine, a seventeenth century institutional writer, was "the right of using and disposing of a subject in so far as we are retained by law or paction" (Rankine, 1909, p.96). The essence of ownership was that there was no definition of rights but only restrictions of rights as set down by laws, rights of the Crown and the common law of neighbourhood. Rights in property belonging to another were *jura in re aliena* and rights in a thing belonging to oneself were *jura in re propria.* These different types of rights were based on the two doctrines: the doctrine of estate whereby land could be split up into different interests of different durations, and the doctrine of tenure whereby land was not owned outright but held by and for the Crown. Proprietorial rights could be restricted by the different interests held in property and by the Crown, but the 'real rights', or the power given by the law to dispose of things and exact from persons that which they are due, were inalienable.

Ownership has come to be referred to as a 'bundle of sticks'; the removal of any stick is a removal of private property whether, corporeal (touchable like land or houses) or incorporeal (untouchable like rights of access) property. Access, therefore, can be a provided as a part of property in the form of an incorporeal right of way, a corporeal strip of land as a footpath,

or an incorporeal restriction on rights through planning and management restrictions i.e., owners can be prevented from stopping trespassers. In this sense, perceptions of rights of access to parks can stem from this concept of enjoying the rights of public ownership. Real rights (ownership) and possessory rights (possession) differ but together determine the legal basis for creating and restricting access. The means by which they do this is through these legal mechanisms.

One of the rights that flowed with ownership could include the right of walking across the surface of one's own land. Restriction on ownership could include the right of the public to walk across the surface of one's land, or the rights of the tenant of one's own land to have the exclusive use and enjoyment of the land including the prevention of one's access to his tenancy. Finally, there were specific constraints imposed by the right of an interest in the land to passage for hay, water, etc. through the legal process of servitudes.

4.2.2 Mechanisms for controlling access

4.2.2.1 The possessory remedy of trespass

The Christians via the Roman Catholic church revived the institution of possession and in so doing revived the process of *interdicta* , a possessory remedy and judicial process restraining a person from a wrongful act. The original creation story of the Garden of Eden appears to parabalise and illustrate this principle. God, disturbed in his enjoyment of the Garden by Eve who exceeds her licence of use, decides to prevent further access to the pair of them and summons them with an *interdicta*, forbidding their re-entry.

The first historic case of restricted recreational access. Early references to this concept are not peripheral to the argument. Much of the way the land is perceived is coloured by the myths and stories of Judaeo-Christian origins. It is not unlikely that popular symbols have an influence on the way we are controlled spatially in society.

Interdicta was a preventative measure. When the institutional writers first document the remedy it had developed a particular mode of use in the courts of law as well as remaining a civil or personal remedy. As a civil remedy, the possessor of land had every right to turn a person off who was temporarily intruding or entering upon his lands or heritage (buildings, etc.) without permission or a legal right - the invasion of his exclusive right of enjoyment being originally a matter of personal judgement of what the possessor of that land took to be an *injuria*, or an infringement on another's rights. As will be discussed in both the Scottish and B.C. case studies, society mediates the legal remedy of trespass by allowing the courts through common or statute law to decide what constitutes an *injuria*. With reference to recreational access, an *injuria* can be judged to be the mere presence or invasion of a person in someone else's exclusive space, i.e., a walker, or it can be judged to be a more physically damaging action like the disturbance of topsoil by wheel tread or trampling of a crop.

The different societal adjudications on what constitutes an *injuria* is a dynamic factor in the relationship. Should recreational walking not be an *injuria*, in essence all land would be technically released for recreational use by the law. All that would be available to the controller of the land to prevent access would

be his own civic remedies, like high fences, verbal or physical threats. The law later came to recognise tolerance in the context of prescriptive action (discussed in Section 4.2.2.3). The contrasts between the B.C. and Scottish perceptions are rooted in the differing interpretations by the legal system of *injuria*. The definition of *injuria*, therefore, can influence the extent of land available for recreation in a legal sense.

4.2.2.2. *Communia omnium* and *regalia*

Another legal principle critical to the perception of communal possession is the concept of *communia omnium* and the later feudal concept of *regalia*. The Romans regarded several subjects as being not capable of single possession or ownership which they referred to as *communia omnium*, though used by all. They saw air, light, the sea, seashores and running water as communia omnium. The uses made of seashores by the public included access for transport and *spatiandi* - the Latin term for passive recreation, to promenade.

The feudal modifications altered the subjects of *communia omium* in a semantic sense but still retained the basic principle of collective use. Since feudal doctrine demanded an owner for everything within the realm of the kingdom and a few miles out to sea, only the high sea, i.e., three miles out, air and light remained *communia omnium*. Typically though, if the Crown could not determine an owner she would retain it for herself. During various assizes in the twelfth century by Henry and the Norman administrators, various subjects and interests in the land were retained by the Crown to keep them out of the public market. This was done if their appropriation would be to the benefit of the

public or Crown.

These subjects were called *regalia*. *Regalia* was further classified into *majora* and *minora*. *Majora* were held by the Crown in the public interest and were inalienable, e.g., the narrow sea, navigational rights to foreshore, gold and silver and treasure. *Minora* were subjects held in trust by the Crown and released to individuals for a profit, e.g., salmon and forests. *Regalia* were restrictions on ownership since the conveyance of land did not imply the conveyance of *regalia* unless expressly granted and vice versa. The principle of *regalia* is largely responsible for the complex multi-interest tenures of land. What is crucial to the understanding is that *regalia* can be misinterpreted as to its ownership since *regalia minora* grants possession of a subject like trees to an individual, but not the ownership of the land.

The principles of *regalia and communia omnium* relate to our perceptions today of what constitutes public ownership of land and rights. People may interpret a Crown interest in foreshore reserved for public navigation use as public ownership. When a *regalia minora*, like an oyster lease, is granted, the relationship between those who believe they have a public right of access and the lessee who has possessorial rights becomes ambiguous and the Crown is called in to mediate. Perceptions of rights are at the heart of the conflict.

4.2.2.3 Prescription

The other possessory remedy available is possessory prescription. Prescription is a process whereby an individual or the public at large have a right to secure property that did not

belong to them by holding or using it for a prescribed amount of time. Prescription is by and large an archaic concept now both in B.C. and Scotland since statute law has come to govern land use and registration, but historically it is of great significance.

Its importance was as a process whereby public rights of access both spatially (as a servitude) and linearally (as a right of way) could be created by public use. As will be discussed in both case studies, society through legal mediations could decide what constituted a legitimate use to qualify for prescriptve possession. If recreational access was deemed not to be a legitimate use, as opposed to transportation for example, then the public would not be able to create their own areas for outdoor recreation, and this form of land use would have to be carried out as a subordinate use with other primary uses of public land given that it was consistent with the primary intended use.

Prescriptive possession had to satisfy four conditions for *de jure* rights of access to exist. First, possession of the right by the public had to be had as a matter of right. The tolerance of a proprietor could never yield to a public right. For example, a proprietor who had tolerated the public use of the track that had been created for their own use to a water source could not evolve into prescriptive possession by the public unless all parties had agreed to a course of prescriptive possession. The difference between tolerance and agreement of a course of prescriptive action is an important difference since tolerance provides no security of tenure to the user.

Tolerance was not a legal restriction on ownership, whereas lawful possession by the public and rights were. Paths created by

the public whose use was tolerated by the owner of the land were defined as footpaths and had no legal relationship attached to them.

The second requirement of possession to be fulfilled was that possession must be sufficient to indicate the right claimed. To acquire rights of recreation or *jus spatiandi* across private land through prescriptive action, the court would have to discern that recreational use was a sufficient type of land use to qualify for a right of way or servitude. Furthermore, possession by one class of the public was not sufficient to fulfill the requirements for a right for the entire public.

The third requirement was that the duration of the prescriptive period was set at forty years or since time immemorial. Finally, use or exercising of the right had to be uninterrupted by the public or the owner of the land.

Prescription has a direct influence on present patterns of access in three ways. First, it was through prescriptive action that many public rights of way evolved in Scotland. Public rights of way were defined as any public passage between public places that were created through the prescriptive possession of the public. They differed from rights of way created as servitudes that were in essence private rights of way available to one landowner (dominant tenement) by another landowner (servient tenement).

Second, prescription was based on the principle of best use of land and established a mindset of best use, which biased perceptions towards multiple uses. Third, where prescriptive action was not agreed to but tolerated, *de facto* use came into practice and the custom of tolerance evolved that had no legal binding.

The sources for our perceptions of access to land are bound up

in these principles of possession and ownership and all the rights associated. The next section illustrates how these principles were applied, interpreted and manipulated by the controllers, seekers and mediators to different circumstances surrounding the economy of the land, first in Scotland and then B.C.

4.2.3 Summary of historic principles

In summary, the critical factors are: 1) the blurred distinction between ownership and possession whereby possession is what gives the right to possessory remedies of trespass (these rights can supercede rights of ownership like a right of access but not the right to dispose of property); 2) the ambiguous nature of what constitutes trespass and how it can be subject to varying interpretations by both possessors of land and the court; 3) the ambiguous status of *communia omnium* and *regalia* whereby the Crown retains rights in 'rights' on land or rights in 'things' like land for the benefit of the public; and 4) the ambiguous principle of prescription which provided the basis for a tolerance of access, and reinforced the philosophy of best use of land. These principles will be raised throughout the case studies for their role in establishing patterns of access and explaining public attitudes.

4.3 Application of principles in Scotland: eighteenth and nineteeth centuries

4.3.1 Rural context

The eighteenth and nineteenth centuries witnessed a great deal of legislative development to match the immense changes in the uses and tenure of the land (Parry and Slater, 1980; Whittington and Whyte, 1983). Within the issues that emerged with the rural development, a series of legal cases litigated issues of access and recreational access that were both linear or over an area. These cases marked the judgements of what constituted *interdicta*, *injuria*, possessory rights, prescription, rights of way, tolerance and *bona fide* uses of land. These judgements strengthened the development of the law with respect to the protection of property rights, but which were "inimical to the rational legal development of a right of recreation" (Lyall, 1970, p.206).

Land improvements by the new landowning classes of the eighteenth century, served to reinforce the concepts of trespass and channelled access. The agricultural improvements of both the lowlands and highlands, as described by Caird (1980) included fences, walls, roads, paths and fields. These physical elements reflected the growing legal concern with establishing restrictive measures on access.

The process of enclosure affected public attitudes in that trespass became identifiable and preventable by the boundary of occupation. Intensification of agricultural production likewise raised the perceptual impact of occupation - the growth of crops, more cottages, farm houses and steadings, woodlands, and in the

larger estates enclosed homes and policies. By virtue of possessory remedies, the occupier (whether owner or tenant) had rights to exclusive use and enjoyment.

Public rights of access were established in two ways: the first way was by the traditional means of prescription and the second by surveyors commissioned by the landowning classes, to draw Scotland into geometric lines (Adams, 1980). In a technical sense, the trespass remedy at common law was sufficient to protect interests in cultivated land because access through crops was being judged as an *injuria* by the courts and the network of paths, roads and right of way could accommodate public passage. Several cases came up in the latter half of the nineteenth century that judicially tested what circumstances the courts judged as *injuria* for a legal interdict, including: *Hay* vs. *Young*, 1877, *Steuart* vs. *Stephen*, 1877 (Scotland. Law cases, 1877, n. 70 and 134), *McLeod* vs. *Davidson*, 1886 (Scotland. Law cases, 1887, n.21).

Most of these cases represent conflict between landowners and adjoining crofting tenancies, and essentially encapsulated the class struggle going on. In the case of *Hay* vs *Young*, 1887, the landowner of Dunse Castle asked for an interdict against a village plumber for walking onto his land to check the location of pipes. The action was thrown out on the grounds that

> "no man is entitled to ask for an interdict against another, unless he has actually suffered or has reasonable cause to apprehend the risk of suffering at his hands." (Rankine, 1909, p.15).

In *Steuart* vs. *Stephen* , 1877 a landlord in Banffshire brought action against a shoemaker for taking a shortcut across a field that was actually in the possession of his tenant. This action was again thrown out.

> "It would be extraordinary if the tenant of a piece of ground, such as that in question, could not allow a neighbour, like the respondent, to cross his field without subjecting him to a charge of trespass by the landlord." (Scotland. Law cases, 1877, n.134, p.874)

This case was significant for two reasons; it tested the possessory rights of a tenant, and raised the issue of what constituted an *injuria*. The first reason is particularly significant to the discussion on B.C., as a history of tenancy on public land was to develop. This argument will be raised in Chapter 7.

McLeod vs. *Davidson*, 1886, litigated the new legal powers to prevent use on what had previously been common land. The court awarded an interdict to the occupier of Staffin Park in Skye to prevent access of neighbouring crofters and their cattle to a traditional watering area. These cases are not about recreational access they are about general access for livelihood and the normal pursuit of affairs but the future implications to informal recreation are significant.

Typically, the objectives of landowning interests in litigating these cases was to provide some control of use and privacy to their properties. Interpretations of trespass by the rural working classes is difficult to determine. Examples of interpretations are evident in the two following examples.

In an illustrated diary by Hiram Sturdy, a miner who grew up in Newarthill at the end of the nineteenth century, references are made to areas in the countryside that he would play in as a child. In one picture essay entitled "the Glen-1890's" he describes a small glen between two farms where they evaded gamekeepers to go swimming in the burn. He describes his perception of the neighbouring farm

belonging to 'Wullie' Nelson. "Not often did our trespassing feet cross to his territory or his ours" (Sturdy, personal journal, 1889-).

Another indication of restricting use of land is illustrated in the following etching by Geikie (1841) and suggests an interpretation of restricted access to land for the non-landowning class at this time.

Figure 4.1 "New lairds make new laws" Geikie (1841)

Closely following on the clarification of these points of common law was the introduction of statute laws governing the control of trespass to land with reference to poaching and gaming laws and laws relating to squatting. The law was clamping down on related aspects of trespass so that informal passage would not be construed to allow unfavourable use. The Trespass (Scotland) Act of 1865 was applied to prevent the squatting of tinkers and gypsies overnight on private land. The Poachers Act of 1707 was strengthened with the Night Poachers Act of 1828, the Day Trespass Act 1832 and the Prevention of Poaching Act in 1869. Meanwhile on rivers and private lochs fishing rights and laws were being clarified and formalised so informal fishing would not damage the commercial viability of salmon leases. In a case of *Montgomery* vs. *Watsons*, 1861 (Scotland. Law cases, 1861, n.98) the action to prevent public fishing despite prescriptive use over forty years was accepted.

It is significant to note that the Trespass Act was actually applied in the Lewes crofter raids in April 1891 to evict unwanted tenants. The significance lies in interpretation of trespasser and the need to assess access within the context of social control.

In the higher marginal lands best suited to grazings, the small shielings were being reorganised into extensive sheep farms in the mid-eighteenth century. The principle of possession again underlay the visible improvements of tracks to the shielings, pasturage, fences and dykes. But the associated depopulation of many of these uplands, led to an extensive single use of the land. Shepherds tended to be sparsely distributed, large areas were left vacant as the stock was rotated throughout the seasons and the original

droving tracks of the shielings contained sporadic local use. There was great regional variation but generally effective social control of trespass had been made by displacing the population.

By the nineteenth century, the law had more exercise with respect to access to uncultivated land. The reasons for this corresponded with the rise of the deer forests. The commercial viability of the Victorian sporting interest in stalking led to a great impact on the more remoter glens, for instance Glen Tilt, Glen Lui and Glen Affric (Aitken, 1977). The commercial viability relied to a great extent on the exclusivity of the land, and the landowners looked for legal support for their exclusivity.

The court tested judicially the following legal principles: the possessory remedy of trespass, the prescriptive rights of the public for rights of way, and servitudes for recreation.

The era of the deer forests was captured by the writings of Baker (1923):

> "... the aim of owners of deer forests is to create a huge solitude, first by removing such human population and their stock as survived the great clearances, and then by closing the mountains and glens to the public." (p. 30-31)

The reaction from the largely intellectual class, increasingly aligning themselves with social concerns and pursuing their particular brand of Victorian leisure, mountaineering and natural history, brought a series of cases to the court to litigate rights of access to these areas, including *Torrie* vs *Athole* (Scotland. Law cases, 1850, n. 60).

These cases, throughout the latter half of the nineteenth century, established some important precedents with regard to recreational access to uncultivated hill land. They emerged because the two interests had the means and expertise to take declarations

of action (Aitken, 1977; Hill, 1980) which precipitated in the rise of the Scottish Rights of Way Society (SROWS); an organisation characterised by colourful individuals, a variety of intellectual backgrounds and mountaineering interests.

The Battle of Glen Tilt between the Duke of Athole and Professor J. Balfour in August 1847 set off a series of confrontations, leading to the establishment of the SROWS. In *Torrie vs Athole,* 1850, the action brought by the pursuers against Athole, judicially examined the right of the public to sue if a public right of way, formed by continuous use, was blocked. The action led the Lord President to remark that there seemed to be "arising a sort of phrenzy which has seized persons in various districts of the country" (Scotland. Law cases, 1850, n.60 p.335).

The phrenzy of the SROWS gathered strength and established the criteria by which a public right of way was established, maintained and lost. Many of their battles took place over droving roads, and old ways through the Highlands particularly in the east, e.g., Duncan McPherson, a British ex-patriot recently returned from Australia, set about blocking Jock's Road through Glen Doll.

One of the main lobbyists for access to the hills was James Bryce, MP of South Aberdeen and member of the Cairngorm Club. He tried for over twenty years, from 1884 to 1906, to put forward various adaptations of an Access to the Mountains Bill in the House of Commons. Though it was never to succeed, the Bill raised the awareness on a national platform of the demands to secure spatial rights of access to hill land.

On the question of spatial access to other types of land, the courts had already been asked to define the circumstances in which

they would grant an interdict for trespass on lowland in the *Hay* vs *Young* case. With respect to deer forests, a definitive case came in 1885, and it was defended not by the rapidly professionalising mountaineers but a crofting tenant in *Winans* vs. *Macrae* (Scotland. Law cases, 1885, n.172).

The action was brought out by the American lessee, Winans, of a lucrative and exclusive 20,000 acre deer forest in Kintail, to secure a permanent interdict of a pet lamb belonging to the defendant who had been caught wandering off the road into unfenced deer forest.

Because the granting of an interdict to a possessor was at the court's discretion, they determined the criteria that warranted a court order. The Scots courts of the nineteenth century employed the Roman principle of *de minimus non curat lex* or, 'the law does not concern itself with trifles', to establish the criteria. The case was thrown out on the grounds that the court was not in the business of granting interdicts where there was no appreciable wrong. This case set a precedent that has been the institutional basis for public attitudes towards trespass in Scotland. Only a civil remedy is available to simple trespass, for a legal remedy to exist damage must be done, as a result walking and informal recreation had a legal niche in which to expand onto private land.

This principle was not an admission of the non-exclusivity of possession, nor did it give any "rights" for perpetuity to the non-landowning public to that land. At the same time, cases were reaffirming the absolute rights of owners and possessory rights of occupants. This was no more evident than around the homes and policies (parks) of the upper classes.

Country estates and enclosed parks began to arise in the eighteenth century. These "walled enclosures marked the beginning of a concern with pleasure and recreation" (Slater, 1980, p.228). Slater notes that with the enclosure of gardens so came the basic desire for privacy and the desire to exclude. A glimpse of this change in attitude is evident in a letter written by Lord Fife to his factor at Duff House, Banffshire to employ a park keeper,

> "just to keep idle people and cattle from going through the park...the gates must be kept constantly locked. There is nothing makes the place so disagreeable to me as the constant crowd of idle people that are walking over my ground when I am at home.' (Slater, 1980, p.239)

In *Breadalbane* vs. *Livingston*, 1790 (Scotland. Law cases, 1791, n.140) the courts declared that no man could claim passage through another man's property for any purpose "far less for any amusement of any kind" (Rankine, 1909, p.134), since every man had the exclusive right of enjoying his property. The invasion of his exclusive rights was in itself a **civil** *injuria* and the proprietor had every right to evict the occupier himself. Landowners feared informal passage because of the likelihood of the public trying to begin a prescriptive course of action to make a public right of way.

From these fears, the law came to clarify the method of prescription and differentiate between the principle of **agreement** of public access from that of **tolerance** of public access. The difference between tolerance and agreement of a course of prescriptive action was an important difference as Lord Deas remarked in 1871, on the case *Mackintosh* vs *Moir*, 1871 (Scotland. Law cases, 1871, n.103)

> "[tolerance of landowners] was most lucky for the public, because otherwise, no member of the public would be allowed to go anywhere unless where there was a known and regular

and established right."(Rankine, 1909, p.331)

Finally, the question of whether the public could gain possession of a servitude of recreation *jus spatiandi* to private land was raised. In other words, a case came up to test the public's right to gain rights of recreation to private land by continuous or immemorial use.

In *Dyce* vs. *Hay,* 1849 (Scotland. Law cases, 1849, n.224) a magistrate and resident of old Aberdeen brought a declarator to secure a servitude for recreation on the private grounds of Lady Hay's Seaton estate. Previously, the courts had permitted servitudes of golf on unenclosed lands and the defence for Dyce, Lord Cockburn, argued that this was a similar case.

> "The pursuer is claiming... a right to enjoy a known and rational recreation. No doubt this recreation implies the use of the whole surface.... A servitude of recreation may arise a little later in society; but in its course it is just as natural and useful and flows as legitimately from the rights and obligations of property." (p.1284)

The court disallowed the issue on the grounds that the law of Scotland did not recognise a servitude of recreation. Lord Chancellor St. Leonards, in the House of Lords, stated that:

> "it is a claim so large as to be entirely inconsistent with the right of property, for no man could be considered to have a right of property worth holding in a soil over which the whole world has the privilege to walk and disport itself at pleasure." (Rankine, 1909, p.355)

This case was critical in the sense that it established that common law was not going to provide the legal mechanism for providing land for recreation, other than linearally, through the mechanism of rights of way. Lord Justice-Clerk argued that

> "a footpath...is seldom so rigidly watched and guarded as that parties, especially on the banks of a river, will not loiter and saunter in various directions, and rest or lie down in the natural course of their progress...the court directs a line of footpath...which is the only right law recognises..,it may be restrained to the line which does least injury to the proprietor's use of land, although what is called the 'recreation' or 'pleasure' of the pathway is greatly abridged. This is a very important rule in that it tends to show that the resort to, or use of ground, will in truth give no other right than a line of a footpath through the property." (Scotland. Law cases, 1849, n.224, p.1274-1275)

As a result, 'the resort or use of ground' was available only by virtue of the tolerances of landowners and the discretion of the courts about what constituted an *injuria*. Recreation was not considered an appropriate use of land to warrant a servitude. As long as land use remained static and landowners remained tolerant there would be no need for courts to redefine a legal *injuria*. The controlling interests in land maintained land in private ownership through a wavering custom of tolerance and kept at bay the possibility of land being taken out of their control for public purposes. A tenuous balance was reached between public demands for access and private interests in land without having to formalise public ownership of recreation areas and tighten up the trespass law to restrict simple access.

This situation was satisfactory as long as land use changes did not seriously affect the opportunities to be had in the countryside. This tenuous position of the seekers has contributed to a form of ambiguity that persists today towards the tolerance ethic.

4.3.2 Urban context

Within the towns and settlements, land use was changing as rapidly if not more intensively. The significant development

regarding access was the public acquisition of land for this purpose. The infrastructure to support the large urban populations was being expanded, e.g., transport corridors, public health facilities. As a result, there arose the need to expropriate public corridors, water reservoirs, cemeteries, transport lines and open space. Legal reform in the nineteenth century is full of statutes concerning the mechanism by which public land was acquired.

The impact of all these changes to access was multi-fold. In the most direct sense, open space was being acquired primarily for public recreation by the local authorities as early as 1867 with the Public Health (Scotland) Act, 1867; Artisans' and Labourers' Dwellings Improvement (Scotland) Act, 1875; Public Parks (Scotland) Act, 1878; Local Government (Scotland) Act, 1894). Also, royal parks of Holyrood and Linlithgow were made available to the public officially and managed by a newly established park constabulary under the Parks Regulation Act, 1872.

Less directly, the provision of open space was being made through footpaths, pavements adjoining streets, markets, commons, drying grounds, institutional grounds, cemeteries and pedestrian rights of way. In the Burgh Police (Scotland) Act, 1892, the burghs of Scotland were given statutory obligations to provide these facilities. The Local Government (Scotland) Act, 1894 gave the parish councils powers, though not obligations, to acquire, assert, protect and keep open any right of way. The acquisition of allotments became a local authority duty in 1892 under the Allotments (Scotland) Act. District committees were given a duty to provide footpaths along highways under the Roads and Bridges (Scotland) Act, 1878, C.51, s.45.

Highways themselves came to be consolidated under local authority management. 'Highways' were roads that had originated through different institutions in Scots' history, e.g., parish roads - set up for the parish and maintained by the parish - to military roads, parliamentary roads, turnpike roads and roads created by statute. Eventually, these highways and managing authorities were amalgamated by the Roads and Bridges Act of 1878. The highways were regulated by a central authority and adjacent owners became subject to statute restrictions on encroaching dangers from their land, e.g., gates, trees, obstacles, livestock.

The English House of Lords had decreed for Scotland that highways were to be simply a public right of passage not public ownership of the land underneath the highway. In England, the public right of use extended to only passing and repassing and any other use was liable for trespass, as in fact was litigated in a case in the nineteenth century in England when a man watching a horse race from a public road was regarded as trespassing. In Scotland, it remained impossible to unlawfully enter upon a public highway. Thus if the public use of the highway for recreation was inconsistent with the use of passing and repassing it could have been deemed trespass in England but not Scotland. In Scotland, recreational use was a tolerated unexpressed secondary right in the eyes of the law, by the fact that there was no grounds for trespass.

Other transport corridors, e.g., canals, railway lines, were owned and operated by private corporations though with special powers to acquire land. These corporations were given the power to enact their own bye-laws to regulate use, including informal recreational use, which could be construed as trespass especially

where there was the threat of danger to the public. Much of their management went into the visual elements of fences, walls, plantations, etc.

The foreshore underwent a significant judicial examination that reserved the right of public access for navigation and recreation. The Crown had an original right of property of the foreshore and was trustee for public rights of access for navigation and fishing. Rights to the bounty of the seashore were *regalia minora* and could be alienated to adjacent owners. The Crown did not really begin to assert rights to the foreshore until the 1840s when pressures for other public uses and rights to the foreshore raised the issue. Up until this time, landowners had silently acquired the foreshore through prescriptive use and titles that did not explicitly exclude the foreshore. Though the Crown lost the title of much foreshore the public rights of access for navigation were inalienable and the Crown retained the trusteeship of these rights.

In an important case in 1846, the public use of foreshore for recreation was judicially established as a right by Lord Young. In the case of *Officers of the State* vs. *Smith,* 1846 (Scotland. Law cases, 1847, n.85) the issue of whether the public right of access could be extended to recreational access was under debate, Portobello Sands being the area. Lord Medwyn concluded:

> "the shore has been compared to a great highway...where there can be no trespass in the prosecution of navigation and fishery; it is for some purposes at least a public place; and to distinguish the seamen or the fisher from the ordinary traveller would not be easy. Taking all these matters into consideration, it is not surprising to find...that the shore is made use of in practice, and is recognised judicially as a medium of public communication between ports and a place of recreation." (Rankine, 1909, p.270)

An earlier dispute over public rights of access for recreation

occured in England in 1821. The King's Bench held by a majority of three to one that there was no common law right of bathing in the sea and of crossing the foreshore on foot for that purpose. The decision was made on the principle that such a right would not be consistent with private property. Several cases following reinforced the English position that the foreshore in England was not a highway.

In Scotland, even where an individual had been granted an express title to the foreshore from the Crown, the title was held to be controlled by the rights of the inhabitants of a burgh in which the foreshore lay - their rights developed from prescriptive exercises, e.g., walking and bathing, which the magistrates supported.

Ports and harbours were given special attention in law to make provision for commercial facilities, thus all along navigable waters of economic significance, access was restricted by the legal powers of the burghs, and the physical restrictions of the industrial infrastructure.

The significance of these cases to recreational access today cannot be stressed enough. The perception that foreshore is accessible is of great importance to the Scottish population for their outdoor recreational pursuits. The experiences of the courts were also of great significance to the governors in the developing colony of B.C., when deciding how to deal with foreshore ownership and public rights.

Institutional land was also being acquired at a great rate for the educational, health, legal and administrative functions. Though the functions of many of these institutions were public, the

ownership and management was generally under a trusteeship with powers to enact bye-laws to manage public use. In the grounds of schools, universities and hospitals, a tolerance of public access generally existed if recreational use was consistent with the purpose of the institution.

Much of the impetus for the provision of open space lay in the reformist attitudes of the government politicians who felt the physical, moral, and spiritual health of the working classes could be improved through such measures (Walker and Duffield, 1983). Similarly, the awareness of the social conditions and public health hazards by the merchant and professional classes led to restrictions of access elsewhere, e.g., reservoirs, inland water bodies, private gardens. The proliferation of jagged glass-topped walls, high iron fences and guard houses at reservoirs or cemeteries, was as much a precaution to control public health standards through control of access as the maintenance of privacy. The threat of cholera to nineteenth century people was as great a threat to security as theft.

These Victorian artifacts are of significance because of the impact that they have had on the built landscape, e.g., iron-fenced water bodies, e.g., Shotts, in West Lothian, providing effective restrictions of access.

One final legal measure that was adapted from the English experiences and influenced indirectly landowning attitudes to public access was occupier's liability. Occupier's liablity was introduced in Scottish courts through English common law at the very end of the nineteenth century. Through various court cases, it was found that owners were under an obligation to fence dangers on the land so as

not to endanger visitors to the land. Visitors were originally categorised into invitees, licensees and trespassers. The first two were owed a duty of care and the latter was not. This was eventually to change a half a century later but the influence this had on the tolerance of the landowner was probably increased as he had no duty to ensure unknown visitor's safety.

4.3.3 Summary of historical access in Scotland

By the turn of the century, most of the issues concerning rights of public access to land had been judicially tested. Lyall (1970) argues that the litigation of spatial access came too early for a logical legal development of rights of recreation to develop, thereby leading to an inflexible legal structure for recreation to expand in.

The principles governing legal decisions included, the principle that the court does not concern itself with trifling matters, the principle that recreation was not a suitable use of land to warrant prescriptive possession, and the principle that whoever is in possession of the land has exclusive use and enjoyment and cannot be disturbed in that enjoyment except by restrictions of the Crown, e.g. *regalia* and Crown reserves, and servitudes. The application of these principles had several implications to access to land for recreation.

First, where there was a right of public passage, recreational use could be carried out as long as it was consistent with the primary intended use, e.g., foreshore, roads, cemeteries, rights of way, etc.

Second, where no public right of access existed across private

ground, *de facto* recreational use could be made of the land provided such use was tolerated by the possessor of the land and no damage was being done. The criteria for damage or an *injuria* was judged by the courts, and a legal remedy of convicting the trespasser was only available if considerable damage was done and the discretionary powers of the courts awarded an interdict. Therefore, to all private ground, the critical factor determining the potential for recreational use was the use of the land and the attitude of the owner or occupier.

Third, since there was no prescriptive mechanism for the public to secure spatial rights to land for their recreation, the government took on the role of providing open space (parks, walks and gardens), beginning in the cities. Finally, in addition to the provision of open space, the government were beginning to acquire land for other civic functions, e.g., water reservoirs, institutional lands. These lands, though privately managed by trusts, corporations or companies, acquired a quasi-public status because of their public functions and did provide a tolerance of recreational use if use was compatible.

As well as the legal legacy, there is the physical legacy of the land resource which both reinforces and underlies the legal developments of the time. The Scottish built landscape of fences, walls, signs, unenclosed land, urban open spaces, etc. suggests the areas of occupation, zones of privacy, and public rights of access.

From this legacy, it is possible to identify the historical continuity behind perceptions of *de jure* and *de facto* use today. The motivations and rationale of the private and public sector to provide and or restrict are still prevalent, i.e., the need for

security and flexibility, protection of health, safety, privacy, and investment, as well as the role of philanthropy and preservation. Likewise it is possible to see the legacy borrowed by the colonial governments and the application of principles of possession and *regalia,* to adapt to a widely varying land resource and population as discussed in the following section.

4.4 The application of principles in British Columbia: nineteenth and early twentieth centuries

4.4.1 Introduction

The doctrines of tenure and estate from Britain in the nineteenth century were part of the cultural baggage that British colonists took with them to B.C. Perceptions of access to land in B.C. were rooted in these early British principles governing land use and tenure (Robin, 1972; Cole and Tippett, 1977). Patterns of access came to be determined by new interpretations of traditional legal principles.

The vast scale of the land resource led to an interpretation of 'best use' and 'exclusivity' in their most extreme sense, while the concept of *injuria* was adapted to the different land resource and its asssociated controlling interests. With the luxury of land, land uses could be isolated and concentrated to maximise production and security. These principles of the early governing bodies constitute the problematic legacy that shape perceptions in B.C. today.

Two critical principles adopted were that of controlling the land resource for the Crown (*regalia*) and promoting best use (prescription) of the land. These principles provided a means of governing and securing resources in a vast unpopulated country. As a result, by the turn of the century the current pattern of land tenure had been established with ninety-six percent of the land retained in the ownership of the Crown.

To uphold the principle of the best use of land, possessory remedies were strengthened by the protection of exclusive use of

land and a trespass ethic. None of these principles addressed public access directly for there was no need in an empty land and hence the legacy of a vague and indeterminate pattern of public rights to land for recreation. Where rights did exist, the law was little concerned with recreation as such and defined rights within the terms of common law, e.g., rights of way, navigational rights. More importantly, common law defined where rights did not exist through the mechanism of possessory remedies, such as trespass, that protected and controlled the exclusive use and enjoyment of possession of land.

Perceptions influenced by the size and scale of B.C. reinforced these principles.

> "We'all now, what's that'er flag, with them letters?"
> "Le'ss see, 'B.C.' in ancient history means 'Before Christ' I believe... fur this 'fernal location don't 'pear to bin much overrun with strangers since that period. 'Guess I'll make tracks back to Californy right smart you bet!"
>
> (Excerpt from *Very Far West Indeed,* a journal by R. Byron Johnson 1860, private collection. The excerpt records a conversation, overheard by the author, of two people aboard a boat approaching Victoria, B.C. in 1858)

The impact of an empty and vast land on the perceptions of the small, predominantly male, eclectic population of European, Chinese and American colonists has dominated the public consciousness to this day. The potential for the extraction of primary resources and the physical inhospitability of the land shaped the perceptions held by this group of both colonists and governors. Agrarian settlement was impossible except in widely separated valley, plateau and coastal pockets and there was no chance of a shared rural consciousness. As a result, the town and the hinterland became very clearly polarised with the main permanent settlement being contained on the south coast, or near transport lines through the interior.

The hinterland was separated from settlements and people went there to work, not live.

The common law of England was grafted onto this perception of the land, to govern the motley collection of colonists and, more importantly, the Crown's resources. The common law that was adopted by the first governor, Sir James Douglas, was a version of English common law moderated by his own understanding, his own interpretations and his own observations of the experiences of other colonies. Essentially, he brought to the colony the principles of tenure and estate. Given the task of managing Crown land remedially with limited financial resources "...in an uncharted wilderness of unknown area, and unsuspected resources, inhabited by many thousands of Indians and a few thousand transient miners..." (Cail, 1974, p.1), Douglas had to devise a land system for not only the most accommodating but also widely scattered areas of arable land.

The principles he laid down for this difficult task still pervade in B.C. land policy today. His policies influenced the way land was to be possessed and defended and how public rights were to be identified and secured. In his first proclamation concerning Crown lands he established the following principles:

> "1) all land belonged to the Crown and all minerals(sic)
> 2) the executive of the colony could reserve portion of unoccupied Crown land for public purposes
> 3) all land was subject to rights of way, public and private, for water, pasturing, mining, which may at any time after sale be specified by the Chief Commissioner of Lands and Works". (Bury, 1860, p.12)

These principles embraced the doctrines of tenure and estate (see Glossary) but had their own colonial flavour. The governors had the dual tasks of trying to avoid land speculation whilst at the same time trying to encourage honest settlement. Land and security

were given to settlers through legislative means if they demonstrated the "best use" of the land, but the government retained some control through retaining ownership of Crown *regalia*, such as mineral rights and future rights of way.

These principles were applied both to the settlement of towns and agricultural areas and to the exploitation of the resources in the hinterland. Application varied through time as knowledge of the resource grew and demands changed, and also varied between town and hinterland. In essence two laws of the land based on similar principles developed. These principles have shaped the pattern of opportunity for outdoor recreation in both settlement and hinterland. The impact of these principles on access for recreation in the settlements will be examined first, followed by the impact on access in the hinterland.

4.4.2. Settlement context

The most critical constraint on public access in settlements, including agricultural land, was the development of the trespass ethic. The governors needed to attract settlers and encourage the "best use" of the land so that they would have a secure community to govern. The commitment in statute to security to the settler is evident from this statement in a handbook written in the Victoria *Colonist* in an attempt to lure settlers:

> "In a country where land is the staple investment, where every thrifty man owns real property and where there are practically no agricultural tenants, it is of the first importance that titles should be secure, transfer easy and registration in every way beyond possibility of error. The system has been framed to that end..." (1893, p. 1)

Security was given through the protection of tenure whether

permanent tenure, e.g., estate in fee simple, or temporary tenures such as leases. In this way, any *bona fide* occupier of land was entitled to exclusive use and enjoyment of that land, with title to prove exclusive use and common law remedies of trespass to protect his exclusive use.

An additional grant of security was given through the statute law of trespass which was enacted to provide a summary remedy "... for the protection of farmers and other occupiers of land against trespassers." (R.S.B.C, 1897, c. 186, s.2.2-2.3) A trespasser was defined as any person or livestock found inside an enclosure without the consent of the owner or occupier, so that even temporary lessees of the land had the legal remedy of prosecuting trespassers. This legal mechanism to grant security had an impact on access both physically and perceptually. Since settlement demanded the presence of posts and fences to be bona fide, the association of fence with trespass and property marked the settled landscape as inaccessible in people's minds.

Security from competition for the land was central to a settler's mind. This need for security extended to those even with only temporary tenures in the land, for example hay licences.

Another critical constraint on access came about indirectly through the principle of setting aside reserves, rights and privileges which enabled the governors to act like feudal lords. Land was one thing the Crown possessed and in the settled areas land could be allocated to specific uses simply by designation. This land policy had a triple effect on public attitudes. First, it created a single use view of land, including recreational land, so that no tolerance for integration of land uses was ever nurtured.

The second effect was a complicated mosaic of public, semi-public and private lands to which public rights of access were left undefined. The Crown's right to set aside reserves to single purpose functions, e.g., school lands, church lands, Indian lands, and in 1876 even park lands, was exercised to the utmost while land was available. These reserves were set up on the principle of a corporation or trusteeship, with an appointed board of trustees who owned and managed but could not sell the land. These lands were in essence private lands under the trust of those individuals appointed to the managing board. The confusing legal basis of designation, ownership, management and possession of these lands proved no problem so long as the pressures on these lands remained low. The legacy was of vagueness and ambiguity about public rights of access versus public rights of ownership.

The third effect was to be more positive in that large areas of primarily recreational space were reserved within the townscapes, as long as they proved the best use. Under the principle of *regalia*, the Crown retained the ownership of the foreshore, tidal river banks and navigable rivers. As in Britain under common law, the Crown acted as trustee for public rights of navigation and fishing access along the foreshore. The governors decided in 1867 to retain the Crown title to foreshore as well. This allowed a public right of access to develop as subordinate to the navigational right of access. Thus one of the most important recreational resources of B.C. was indirectly established. Public rights of passage were also reserved on the water of navigable rivers, though non-navigable rivers, lakes and streams within private land remained private as in common law.

More directly, urban parks were formally designated for the use and enjoyment of the public. From 1860 onwards, clauses within the Land Registry Act 1860 and Land (Crown) Act 1875 described the mechanisms by which public or private land could be retained as public parks (later Public Parks Act 1876, then Municipalities Act, 1888). Parks were either appropriated as a percentage of private land at the time it was subdivided or set aside as reserves by the Lieutenant-Governor.

The objectives for appropriation also varied. They were either created for philanthropic reasons, or business reasons. Of the former, the motivations were parallel to the movement in Victorian Britain and America for planned cities whereby the wealthier settlements of Victoria and New Westminster encouraged the appropriation of scenic city gardens and parks. A Scottish landscape architect, John Blair, was the designer of the oldest park in Victoria, Beacon Hill designed in 1888, modelled on New York's Central Park. The idea had been generated twenty years earlier as this editorial illustrates:

> "We are unqualifiedly in favour of extending the area of liberty. We want to have room to spread out after selling fiddle strings or steam engines, crinolines or town lots, soda water or camphere..." (*British Colonist*, 1861)

These sentiments were more commonly overruled by more practical business reasons, especially in Vancouver where parks in the urban areas were retained for a reserve of naval spars and latterly, tourism (McKee, 1982).

With a designation of municipal park, rights of access for recreation were expressly granted under the bye-laws enacted by the appointed park councils, though the land itself was never publicly owned. Use was regulated so as to be consistent with the

management's objectives. The limitations of this designation have only been realised recently when differing attitudes about the functions of urban parks have arisen.

The principle of granting rights of way across land was never intended for recreational opportunities. Rights of way were largely adopted for transportation corridors, through local managing authorities. Tranport corridors were developed for the use of vehicles, first wagons and later automobiles, though mechanisms for adopting rights of way for footpaths did exist through common law. As a result, no historical infrastructure of footpaths developed that would have accommodated later recreational use, as had occurred in Britain.

Most of the needs of movement and public passage were absorbed by statutory highways. The planning of the cities and towns in grids with surveyed subdivided parcels of land, sidewalks and reserved roads and highways ensured that, in the settled areas of the colony, there was no need for a prescriptive source of action to be taken by any individual for a right of way. Access for recreation on sidewalks and roads was never expressly granted but was tolerated so long as recreational use was consistent with intended use.

Whether it was for transportation, housing, parks, or institutional land use, the Crown's principle of reserving land for those specific uses dominates the early patterns of development. As a result, within settlements there was little need to rely on ways to integrate uses of land.

4.4.3 Hinterland context

Settled land comprised about one or two percent of the total land base of 359,279 square miles occupied in 1871 by 9,092 whites, 459 coloureds and 1,319 Chinese (Canada. Census, 1860-1871, v.2, p.377). In the hinterland, this balance of plentiful "waste land" with no administrative body acquired a seemingly schizophrenic status. It was the Crown's land but also available for anyone's consumption.

> "the prevalent attitude was to be that...should anyone have enough initiative to pay a nominal price, no hindrance should be put in his way." (Cail, 1974, p. xiii)

The policy of granting security to ensure best use at the same time as maintaining public control through ownership of the resources in the hinterland was to leave a troubled legacy. Early settlers came to view Crown land as an economic commodity under the control of a government eager to see returns made on the 'waste', but available to members of the public showing initiative. Because this intiative tended to be the characteristic of industrial companies, a partnership between industry and government was quickly established. Consequently, the legal infrastructure had as its goal the protection of industrial security. Public rights of access to this quasi-public land were either vague or designed to favour the possesory rights of industrial occupiers.

4.4.3.1 Park land

The policy of granting land to the best use of land was adopted even with respect to national and provincial parks. Parks initially were no guarantor of public rights of access. Some of the most scenic mountainous areas of B.C. lying within railway properties

with no apparent economic use came to be designated as park land to attract tourism. The appropriation of scenery began in the Interior alongside the tourist hotels adjacent to the Canadian Pacific Railway. Victorian leisure tastes for paying to see scenery spawned the national park system. W.C. Van Horne, the General Manager of C.P.R. wrote in 1886:

> "the object of the reservation is not really to provide for parks in the ordinary sense but to preserve the timber at places where the finest scenery occurs, as the scenery will be much injured by it being cut away." (in Marsh, 1982, p. 65)

Early designations of national parks did not grant public rights of access to the site for recreation but ran them as commercial ventures with charges being levied for visits to hot springs or specific viewing points, and often land within the parks was leased or sold to catering and hotel services.

The Strathcona Park Act (R.S.B.C., 1911), the first provincial park, followed very much the same formula and made legal provision to revoke designations or change boundaries when mineral and resource interests were seen to surmount tourist benefits. Parks trustees granted rights of access to the land but precluded public interests in park land.

Today, park boundaries continue to alter and these changes to parks that the public have come to accept as public land are being challenged. Public perceptions of the single use of land are not readily accepting of the alternatives of integrating industrial uses with recreation and conservation. The principle of "best use" is now being questioned by a more voluble public who have differing values for the land resource than those of the governing bodies.

As park opportunities erode today, the public are looking

increasingly towards Crown lands for their recreation. Within these lands, the public are having to challenge pervasive traditions of constraints accompanying the uses to which the land was designated.

4.4.3.2 Crown forestry land

> "As Germany was to the Romans, so much of our new world is to us!.... Germany has been cleared of her forest and is now one of the finest most progressive of European countries. May not the clearing of our forests produce a similar result in the distant future of British Columbia." Professor Macoun of the Geological Survey (Canada. Papers, 1911)

Since most of this Crown land was forested and most of the agricultural land suitable for settlement was "claimed" by the turn of the century, it was logical that industrial initiative found its market in timber, and land policy moulded itself to the use of land for forestry. The impacts of the industry on access were made in a variety of interrelated ways.

The beginning of Crown control of timber lands began essentially in 1912 with the first Forest Act (S.B.C., 1912, c.17) in response to the growing demand for timber. Before this 900,000 acres had been purchased outright (mainly on Vancouver Island) but the estimated 182,000,000 'inexhaustible acres' of land (B.C.S.P., 1911) remained in the province's control.

The 1912 Act established a status quo that has lasted to this day. First, land and management of land remained in the control of the government. Second, the timber could be dispensed in a variety of different tenures each of which had a different legal impact of public access, and third, in the Crown's forests travellers could not be construed as trespassers as long as they were not damaging forests or interfering with operations.

At the time, recreational use and industrial use had the luxury of choice and could co-exist independently with this vague arrangement. Today this arrangement has become problematic with regard to recreational access and the legacy of the dichotomy of who has the legitimate right "to" the land and who the legitimate right "in" the land.

4.4.3.3 Crown grazing land

To the east on the dry interior grasslands the potential for the cattle industry was being realised at the end of the nineteenth century. Crown control of grazing lands began as early as the 1870s. The impact of this industry on access was through a historical tradition of vagueness of rights and physical constraints.

The land was dispensed of under leases with controls through time and yearly rentals. The principle of granting security led to leases that carried with them a grant of absolute possession, modelled on the limited ownership leases under common law, subject only to vague clauses allowing access along existing roads and trails.

In 1919, a new Grazing Act introduced alternative licences and permits to the old leases (R.S.B.C., 1924). The licences and permits issued were not grants of absolute possession, but short term interests in pasturage or hay. Though they had no real possessory rights, they were entitled to protect their interest by erecting fences and preventing damage and there was no apparent visual difference between the licences, leases and permits.

The legacy of the Crown control of grazing land has been a vague

clause of channelled access to these lands which has again left a troubled legacy of vagueness.

4.4.3.4 Other uses of Crown land

Land owned by the Crown that was not alienated under lease, licence or permit, or reserved for some public purpose, e.g. highway, park, or for Indian settlement, was regarded as unalienated Crown land. The law has never clarified public rights of access to these lands. Unauthorised use that amounted to damage or occupation was not tolerated under statute, though the traveller, as described under the Forest Act, was tolerated as long as his use was consistent with the managing authority, i.e., the Crown in this case. No right of access for recreation was expressly granted over Crown land to the public. The Crown, like any holder of land in fee simple, was the owner and had the right of exclusive use and enjoyment.

The use of land for mining was again governed by a system of leases and claims, and the use of land for large scale transportation, energy and communication services came to be governed through a system of ownership and management by Crown corporations. The impact on access was through an unclear definition of rights leading to public confusion of what was public land or public rights within the spectrum of land under different ownerships and management.

By the second decade of the twentieth century, this mosaic of private, semi-private/public and public land had been formed and the policy of government to adopt the role of land manager had been established. Into this confusing structure of land tenure, the

processes of possession and reservation of land had been ingrained and a pattern of recreational use of land had begun.

4.4.3.5 Summary of historical access in B.C.

The mechanisms by which land has been made available for recreation have stemmed from the principles within B.C.'s early land policies. There has been the mechanism of the trespass remedy which has negatively defined opportunities. Occupiers of land have defended their exclusive use and enjoyment of the land through the common law and statute law remedies of trespass and, therefore, opportunities have been defined by default, i.e., where no occupation of the land exists. This mechanism has evolved out of the principles of ensuring "best use" and security to the occupier. As a result, the public consciousness has been ingrained with a trespass ethic.

There has also been the mechanism of retaining ownership of land and resources (through the principles of tenure and regalia), while releasing resources through temporary tenures. This has led to a complicated mosaic of public, semi-public and private land and a vagueness of public rights to and in the land. The vagueness has opened up opportunities where vested interests were not in direct competition for rights or the resource. However, as intensification of land uses and population pressures have increased, this vagueness has restricted opportunities for recreation and led to conflict.

The mechanism of designating land to single use has led to real and perceived restrictions on integrating recreation with other economic uses. Likewise, recreation has been contained within the boundaries of parks under the economic guise of tourism in the

hinterland, and under a label of social amenity in the settlements. Informal opportunities have been carried out on unoccupied lands but as economic use of these lands encroaches onto these territories, the pioneering demands for security for exclusive recreational use are expressed.

The luxuries of polarising land uses, retaining exclusive possession, having absolute security and being able to secure something-for-everyone have made the demands of a growing population with an ever decreasing resource difficult to balance. Though these pioneering expectations continue, new values are being placed on the land which are aesthetic. The governing authorities of B.C. now find themselves confronted with access issues which challenge policies, values and this traditional legal infrastructure.

4.5 Summary of the historical and legal evolution of access in Scotland and B.C.

The two case studies demonstrate the evolution of access within the two different regions. Similar legal concepts of ownership and possession of land were applied to the different contexts of the land resource and land uses. The principle of best use ensured in both regions that recreational land use was never considered a *bona fide* use of the land (even in the parks with an emphasis on tourism, scenery preservation, conservation or mineral and forest reserves) except within the urban areas where pleasure grounds emerged as a Victorian social provision. Because recreational land use was not *bona fide* there have been two implications. Recreational land could not be acquired through public prescription which created the obligation for the Crown to acquire land. The

second implication was that recreational use outside settlements has developed only through "tolerance" both in the large estates of Scotland and in the Crown forests of B.C. Observed tolerance has created a flexible position for the land controllers and an ambiguous one for users. The tradition of tolerance has a difficult transition with the growth in outdoor recreation because of the ambiguity of responsibility and public perceptions of accessibility.

The evolution of a tiered structure of parks is similar in both regions to meet growing and diversifying demands of the public, but as will be discussed in the next chapters problems have evolved in the nature of the designations, and the reconciliation of recreation with conservation and/or amenity.

The doctrine of estate applied in both regions ensured that various rights of access along pavements, roads and foreshore between public places have been reserved for public use. Recreation had begun to develop as a secondary use within this infrastructure of transport and communication routes. The legacy of traditional footpaths and pedestrian rights of way in Scotland provides a large resource for recreation to expand into; a resource which B.C. has never developed to such an extent because of its rapid modernisation.

The other legacy of the doctrine of estate to both regions was the ability to create divisible rights in the land which included rights to resources, access, and occupation, and divisible restrictions on ownership which included planning restrictions, designations and management obligations. All these factors developed to cope with the maximising of economic uses of land, but had been ill-defined regarding the status of recreational use of

land.

Scotland differed from B.C. in the most direct sense because it litigated and clarified the status of recreational use in the eyes of the law in various aspects, due to a highly motivated and articulate group of individuals early on in the century. B.C. had not progressed as far down the evolutionary scale by this time, with no land use conflicts precipitating the need to litigate. B.C. also differed with respect to the interpretation of trespass and what constituted an *injuria.* Simple trespass could be pursued by a legal remedy as well as a civil one in B.C., which created a different ethic towards recreational use of enclosed lands than the Scottish ethic.

The relationship of recreation with the existing land uses of this historical period in both regions is one of at best tolerance but typically unrecognised. The continuing development of recreational use in the post-war period into the existing structures of landownership and legal definitions of accessibility is problematic for both. The respective evolutions of access reflect the contemporary issues in the two regions.

CHAPTER 5

CONTEMPORARY PERCEPTIONS AND ATTITUDES TOWARDS ACCESS: RESULTS OF THE QUESTIONNAIRE SURVEYS IN SCOTLAND AND B.C.

5.1 Introduction

The results of the questionnaires are presented in three different sections. The results of the socio-economic data are in Appendix 2.4 which includes a statistical comparison of users in Scotland and B.C. A brief summary of this appendix is included in the first part of this chapter in order to introduce the context of the survey. The discussion and tabulated results of the site specific questions and the general questions on access follow this summary.

The frequency of the responses are presented as well as summaries of the types of comments and attitudes expressed in the open questions. The implications of the levels of awareness, perceptions and attitudes are discussed in Chapters 3, 6 and 7 in the context of the concept of access and the case studies in which the relationship operates.

5.2 Distribution of survey samples

The distribution of the responses within the different survey areas is shown below in Table 5.1. The initials represent the survey areas used throughout this chapter. This distribution in both Scotland and B.C. was weighted in favour of responses from sites that were being used for weekend or holiday periods. However, a broad range of users were surveyed providing a qualitative cross-section of users' views.

Table 5.1 Distribution of sample in Scotland

Total Sample 215 Respondents

LOCATION	PERCENTAGE OF SAMPLE
Pentland Hills Regional Park (PR)	18
Kelvingrove (Glasgow City) Park (KP)	8
Ben Lomond Hill (BL)	11
Cashel Campsite (Forestry Commission) (CC)	24
Rothiemurchus Estate (RE)	23
Goatfell (National Trust for Scotland) (GF)	16

Table 5.2 Distribution of sample in B.C.

Total Sample 221 Respondents

Location	Percentage of Sample
Swan Lake Nature Reserve (SL)	8
Witty's Lagoon Regional Park (WL)	9
Ruckle Provincial Park (RP)	13
Garibaldi Provincial Park (GP)	17
Alice Lake Provincial Park (AL)	22
Monck Provincial Park (MP)	20
Golden Ears Provincial Park (GE)	11

5.3 Recreational groups within the survey samples

In both surveys, the respondents were not representative of the general population when socio-economic variables of Census data were compared to survey data (see Appendix 2.4). In the Scottish sample this was evident from the variables of educational levels, professional occupations, car ownership, and English origin (Table A2.23 and A2.24). In the B.C. sample, this was evident again in educational background, occupations and northern European background.

Within these two cultural groups, however, there were three

distinct groups as shown in Table 5.3. These groups were characterised by the respondents' relationship with the location and the type of activities carried out at the location (Table 5.4 and 5.5). In B.C., the three groups included the casual day walkers, the hikers and the car campers. In Scotland, they included the casual day walkers, the hill walkers and the car campers. In some instances differences of attitudes and perceptions to questions are evident between the three groups. These differences are brought out where relevant, but the emphasis is on aggregate views of the cultural group as a whole. The existence of the three groups is used as evidence to verify the range of user types within the sample as a whole. Generally, the groups pursued a wide range of activities, though this was more marked in B.C. than Scotland as is evident in Tables 5.4 and 5.5, reflecting the greater range of opportunities available in B.C. as discussed in Appendix 2.4.

Table 5.3 Recreational groups within the samples

GROUP	LOCATIONS	
	SCOTLAND	BRITISH COLUMBIA
CASUAL DAY WALKERS	PR, KP, RE	SL, WL, GE, AL
HIKERS/HILLWALKERS	PR, BL, GF, RE	GP, RP, GE
CAR CAMPERS	CC	RP, MP, AL

Table 5.4 Visitor's activities at survey sites in Scotland

ACTIVITIES	LOCATION					
%	PR	KP	BL	CC	RE	GF
WALK	92	99	30	38	85	85
INFORMAL ACT.	-	-	-	14	-	6
NATURE OBSERV.	13	-	-	5	12	-
HILL WALK	5	-	69	6	6	18
CYCLE	-	6	-	-	-	3
BACKPACK	-	-	9	-	4	3
SAIL/WINDSURF	-	-	-	24	-	-
WATERSKI	-	-	-	19	-	-
OTHER WATERSPORT	-	-	-	20	4	-
TOURING	-	-	-	-	-	11
PONY TREK	-	-	-	-	-	3
CAR CAMP	-	-	-	100	-	-

Table 5.5 Visitor's activities at survey sites in B.C.

ACTIVITIES	LOCATION						
%	SL	WL	RP	GP	AL	MP	GE
WALK	77	85	11	3	26	17	28
INFORMAL ACT.	-	25	15	3	16	14	-
JOG/RUN	18	-	4	-	2	-	-
CYCLE	-	5	32	-	-	-	-
HIKE	-	-	42	82	42	14	72
BACKPACK	-	-	-	32	-	19	-
NATURE OBSERV.	36	30	4	13	2	9	8
SWIM	-	-	-	-	20	19	20
FISH	-	-	7	-	18	51	4
CAR CAMP	-	-	40	-	40	19	12
POWERBOATING	-	-	-	-	-	5	-
CANOE/KAYAK	-	-	-	-	4	-	-
SAIL	-	-	-	-	-	5	-
HORSE	-	-	-	-	2	-	-

5.4 Field operations

Field operations are summarised in the following two tables 5.6 and 5.7.

Table 5.6 Field operations in Scotland

NAME OF LOCATION	LOCATION	DATE	ENVIRONMENT AND FACILITIES	VISITORS SURVEYED	A	B	C	WEATHER	TIME	METHOD	DETAILS
PENTLAND HILLS	Lothian Region	6/7 7/7	Urban fringe, hill farming, visitor centre and footpaths.	Day users	40	1	0	sunny	9:30 to 1:00	next-to-pass cordon	Questionnaires completed on the spot along footpaths. High response rate.
KELVINGROVE	Glasgow	20/7	Urban park, gardens and footpaths, formal facilities.	Casual day users	18	7	3	rainy	10:00 to 12:00	next-to-pass cordon	Questionnaires completed on the spot. Refusals due to rain.
BEN LOMOND	Central Region	28/7	Remote hilltrack, no facilities beyond head of footpath.	Day users	23	5	5	cloudy	10:00 to 3:00	next-to-pass cordon	Questionnaires completed on the spot along footpath. Refusals due to mosquitoes.
CASHEL CAMPSITE	Central Region	10/8	Lochshore and forest campsite with full facilities, and warden service.	Overnight users	52	3	3	rainy	9:30 to 1:00	next-to-pass cordon	Questionnaires distributed in the morning, collected 3 hours later. Successful method.
ROTHIE-MURCHUS ESTATE	Highland Region	10/8 11/8	Lochshore, nature reserve, with visitor centre and warden service.	Day users	48	1	1	sunny	12:00 to 5:00	next-to-pass cordon	Questionnaires completed on the spot along footpath near carpark.
GOATFELL	Island of Arran	1/9 2/9	Remote hilltrack, no facilities beyond head of footpath. Warden service.	Day users	34	10	3	cloudy	11:00 to 3:00	next-to-pass cordon	Questionnaires completed on the spot along footpath. Refusals due to mosquitoes.

*A COMPLETED QUESTIONNAIRES
B NUMBER OF REFUSALS
C NUMBER OF NO RETURNS

NAME OF PARK	LOCATION	DATE	ENVIRONMENT AND FACILITIES	VISITORS SURVEYED	A	B	C	WEATHER	TIME	METHOD	DETAILS
SWAN LAKE	Vancouver Island Victoria	2/6	Lowland lake, city nature reserve, with trails and centre.	Day users	17	9	6	cloudy	9:00 to 11:00	next-to-pass cordon	Questionnaires completed on the spot along trail, high number of refusals from joggers.
WITTY's LAGOON	Vancouver Island Metchosin	10/6	Lagoon, regional reserve, with trails and centre through forest.	Day users	20	1	0	sunny	11:00 to 16:00	next-to-pass cordon	Questionnaires completed on the spot along trail, high respnse rate.
RUCKLE	Saltspring Island	1/7 2/7	Coastal/island day use and tent camping, warden service.	Overnight	28	4	35	sunny	21:00 to 9:00	all users	Questionnaires distributed at night; collected next morning; poor return rate.
GARIBALDI	South Mainland	7/7 8/7	Mountainous/wilderness, day-use and tent camping shelters, trails warden service.	Overnight and day users.	38	0	7	cloudy cold	9:00 to 20:00	all users	Questionnaires completed on the spot or returned same evening; refusals due to cold.
ALICE LAKE	South Mainland	10/7	Forest/lakes, day use and car camping, full facilities and warden.	Overnight and day users.	50	1	5	clear	18:00 to 21:00	all users	Questionnaires distributed at night and collected 3 hours later. Successful method.
MONCK	Interior Mainland	15/7	Arid grassland/lake day-use and car camping, full facilities and warden service.	Overnight and day users.	43	0	7	clear	18:00 to 21:00	all users	Same as Alice Lake method.
GOLDEN EARS	South Mainland Vancouver	23/7	Forest/river day use and car camping, trail system and warden service.	Dayusers	25	1	0	sunny	11:00 to 16:00	all users	Questionnaires completed on spot at head of trail, high response rate from family groups.

*A NUMBER OF COMPLETED QUESTIONNAIRES
B NUMBER OF REFUSALS
C NUMBER OF NO RETURNS

5.5 Awareness of access through site specific questions

The first questions included Q. 9 and 11 (B.C.) and Q. 9 and 10 (Scotland). These were used to determine how important the factor of rights of access was in selection of sites. The first question was testing whether access was considered a factor in an open question: why did you come here? The second question was testing the relative importance of rights of access in a pre-coded question with other factors provided, including scenery, wildlife, presence of washrooms, etc.

These questions touched on the relationship between perceptions and behaviour, in other words, whether use was related to the perception of access to that property. Using access as a variable raised comment within the respondents and provided some clues as to the thought processes individuals make when selecting locations.

In both surveys, the responses to the open question of "why did you come here? were broadly similar and fairly typical of surveys of park users where this question is posed (Countryside Commission, 1970). Replies fell typically into three categories, in decreasing order of importance: 1) specific interest in the area because of scenery or opportunity for specific activity; 2) general comments about area and; 3) reasons independent of site, e.g., 'we came for a change'. (Table 5.8)

However, there were four replies which included the existence of access as a reason. There was only one respondent in B.C. who noted that access to the alpine regions was the reason for the choice and three Scottish respondents who remarked that access to land or water was the reason for choice. In the open question,

access was rarely a consideration on deciding why to visit a location.

Table 5.8 Response to question "WHY DID YOU COME HERE?"

RESPONSE	SCOTLAND	BRITISH COLUMBIA
	%	
REASONS SPECIFIC TO SITE	63	60
GENERAL COMMENTS ABOUT AREA	24	21
REASONS INDEPENDENT OF SITE	14	14

In the follow-up question that phrased the same question, but with pre-coded reasons, access as a reason was high in the rankings for both areas (see Table 5.9 and 5.10). The difference between the two surveys was the ranking of access in terms of being "never considered". A much higher percentage of respondents from B.C. had never considered it. If they had considered it, then access was of major importance alongside wildlife and scenery. Scottish respondents ranked it alongside scenery, wildlife and ability to do a specific activity. There was a much lower percentage of Scottish respondents who had never considered it.

Table 5.9 Importance of access in coming to the location: Scotland

LOCATION	RELATIVE IMPORTANCE	A	B	C	D	E	F	G	H	I	J	K	L
PENTLAND	NO ANSWER	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
HILLS	VERY IMPORTANT	22.5	50.0	10.0	27.5	42.5	42.5	40.0	55.0	47.5	7.5	50.0	32.5
	IMPORTANT	5.0	7.5	2.5	10.0	30.0	17.5	7.5	7.5	15.0	2.5	22.5	12.5
	NEUTRAL	17.5	10.0	7.5	17.5	10.0	7.5	5.0	5.0	7.5	2.5	5.0	12.5
2.5 = 1	NOT IMPORTANT	7.5	5.0	5.0	7.5	2.5	5.0	2.5	2.5	2.5	10.0	0.0	7.5
respondent	NOT AT ALL IMPORTANT	22.5	10.0	32.5	15.0	5.0	5.0	7.5	5.0	7.5	5.0	7.5	12.5
	NEVER CONSIDERED	22.5	15.0	40.0	20.0	7.5	20.0	35.0	22.5	17.5	25.0	12.5	20.0
KELVINGROVE	NO ANSWER	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6
	VERY IMPORTANT	27.8	27.8	16.7	16.7	33.3	66.7	27.8	44.4	36.9	22.2	44.4	44.4
	IMPORTANT	5.6	5.6	0.0	5.6	11.1	5.6	5.6	5.6	5.6	11.1	22.2	11.1
	NEUTRAL	11.1	22.2	11.1	0.0	5.6	0.0	5.6	16.7	16.7	16.7	11.1	11.1
5.6 = 1	NOT IMPORTANT	16.7	11.1	5.6	0.0	16.7	5.6	11.1	5.6	0.0	5.6	0.0	11.1
respondent	NOT AT ALL IMPORTANT	16.7	11.1	33.3	44.4	11.1	5.6	22.2	11.1	11.1	22.2	0.0	5.6
	NEVER CONSIDERED	16.7	16.7	27.8	27.8	16.7	11.1	22.2	11.1	22.2	16.7	16.7	11.1
BEN LOMOND	NO ANSWER	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7
	VERY IMPORTANT	13.0	17.4	13.0	13.0	47.8	43.5	39.1	43.5	34.8	13.0	8.7	0.0
	IMPORTANT	13.0	8.7	4.3	4.3	17.4	13.0	13.0	21.7	26.1	4.3	8.7	13.0
	NEUTRAL	17.4	13.0	8.7	4.3	8.7	8.7	13.0	4.3	13.0	17.4	17.4	13.0
4.3 = 1	NOT IMPORTANT	17.4	8.7	4.3	8.7	8.7	8.7	8.7	0.0	8.7	17.4	13.0	4.3
respondent	NOT AT ALL IMPORTANT	4.3	8.7	34.8	34.8	8.7	4.3	4.3	8.7	0.0	21.7	21.7	17.4
	NEVER CONSIDERED	26.0	34.7	26.0	26.0	8.7	13.0	13.0	13.0	8.7	17.4	21.7	21.7
CASHEL	NO ANSWER	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
CAMPSITE	VERY IMPORTANT	9.6	21.2	44.2	21.2	61.5	13.9	44.2	25.0	40.4	19.2	53.8	36.5
	IMPORTANT	9.6	26.9	7.7	15.4	11.5	9.6	9.6	7.7	19.2	21.2	3.8	9.6
	NEUTRAL	17.3	5.8	13.5	15.4	5.8	11.5	11.5	13.5	7.7	9.6	7.7	11.5
1.9 = 1	NOT IMPORTANT	1.9	7.7	3.8	1.9	3.8	11.5	3.8	3.8	5.8	11.5	3.8	1.9
respondent	NOT AT ALL IMPORTANT	13.5	7.7	3.8	9.6	1.9	7.7	9.6	9.6	5.8	15.4	19.2	17.3
	NEVER CONSIDERED	46.1	28.8	25.0	34.7	13.5	44.2	19.2	38.5	20.2	21.1	9.6	21.1
ROTHIE-	NO ANSWER	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3
MURCHUS	VERY IMPORTANT	14.6	35.4	10.4	0.0	83.3	33.3	33.3	60.4	64.6	2.1	18.7	12.5
	IMPORTANT	8.3	6.3	6.3	14.6	8.3	8.3	18.7	10.4	20.8	2.1	8.3	2.1
	NEUTRAL	22.9	16.7	8.3	18.7	2.1	18.7	18.7	10.4	2.1	12.5	18.7	12.5
2.1 = 1	NOT IMPORTANT	16.7	6.3	41.7	6.3	0.0	8.3	2.1	2.1	0.0	8.3	10.4	14.6
respondent	NOT AT ALL IMPORTANT	16.7	10.4	16.7	37.5	0.0	2.1	12.5	2.1	0.0	50.0	25.0	29.2
	NEVER CONSIDERED	16.7	18.7	27.1	16.7	0.0	22.9	8.4	8.4	6.3	18.7	12.6	22.9

A = Presence of marked paths
B = Safety from motor traffic
C = Presence of toilets
D = Presence of car park
E = Guarantee of scenery
F = Free entry and use
G = Guarantee of being able to do specific activity
H = Guaranteed rights of access
I = Guarantee of wildlife and natural features
J = Guarantee of meeting people
K = Convenience of location to home/accommodation
L = Familiarity of location

Table 5.10 Importance of access in coming to the location: B.C.

LOCATION	RELATIVE IMPORTANCE	A	B	C	D	E	F	G	H	I	J	K
SWAN LAKE	NO ANSWER	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9
	MOST IMPORTANT	17.6	41.2	5.9	70.6	58.8	5.9	35.3	64.6	23.5	29.4	35.3
	VERY IMPORTANT	17.6	11.8	0.0	0.0	5.9	52.9	17.6	17.6	0.0	29.4	5.9
	IMPORTANT	23.5	17.6	5.9	23.5	11.8	5.9	17.6	5.9	11.8	5.9	17.6
5.9 = 1	NOT IMPORTANT	23.5	0.0	23.5	0.0	17.6	23.5	5.9	5.9	35.3	23.5	29.4
respondent	NEVER CONSIDERED	11.8	23.5	58.8	0.0	0.0	5.9	17.6	0.0	23.5	5.9	5.9
WITTY'S	NO ANSWER	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
LAGOON	MOST IMPORTANT	40.0	30.0	25.0	65.0	45.0	35.0	40.0	80.0	10.0	20.0	20.0
	VERY IMPORTANT	20.0	30.0	0.0	15.0	15.0	20.0	5.0	0.0	10.0	20.0	5.0
	IMPORTANT	25.0	15.0	10.0	15.0	30.0	5.0	25.0	10.0	5.0	25.0	40.0
5 = 1	NOT IMPORTANT	10.0	0.0	30.0	0.0	5.0	20.0	5.0	0.0	35.0	20.0	25.0
respondent	NEVER CONSIDERED	0.0	20.0	30.0	0.0	0.0	15.0	20.0	5.0	30.0	10.0	5.0
	NOT APPLICABLE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.0	0.0	0.0
RUCKLE	NO ANSWER	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	MOST IMPORTANT	3.6	14.3	28.6	67.9	32.1	35.7	35.7	21.4	10.7	3.6	3.6
	VERY IMPORTANT	16.7	25.0	7.1	17.9	17.9	21.4	25.0	39.3	3.6	17.9	0.0
	IMPORTANT	32.1	10.7	28.6	10.7	21.4	21.4	7.1	17.9	17.9	25.0	14.3
3.6 = 1	NOT IMPORTANT	10.7	7.1	17.9	0.0	3.6	14.3	7.1	3.6	35.7	21.4	39.3
respondent	NEVER CONSIDERED	42.9	42.9	17.9	3.6	7.1	7.1	21.4	14.3	32.1	32.2	42.9
	NOT APPLICABLE	0.0	0.0	0.0	0.0	17.9	0.0	3.6	3.6	0.0	0.0	0.0
GARIBALDI	NO ANSWER	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
	MOST IMPORTANT	10.5	18.4	5.3	42.1	13.2	21.1	13.2	36.8	0.0	2.6	5.3
	VERY IMPORTANT	21.1	13.2	2.6	31.6	28.9	36.8	15.8	36.8	10.5	10.5	13.2
	IMPORTANT	39.5	13.2	34.2	15.8	23.7	13.2	23.7	15.8	18.4	44.7	21.1
2.6 = 1	NOT IMPORTANT	10.5	18.4	31.6	0.0	13.2	10.5	13.2	0.0	44.7	18.4	36.8
	NEVER CONSIDERED	10.5	26.3	15.8	2.6	7.9	13.2	21.1	2.6	18.4	15.8	15.8
	NOT APPLICABLE	0.0	2.6	2.6	0.0	5.3	0.0	5.3	0.0	0.0	0.0	0.0
ALICE LAKE	NO ANSWER	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
	MOST IMPORTANT	14.0	10.0	28.0	26.0	14.0	20.0	20.0	14.0	2.0	20.0	16.0
	VERY IMPORTANT	12.0	40.0	28.0	20.0	12.0	18.0	16.0	28.0	22.0	20.0	12.0
	IMPORTANT	38.0	16.0	30.0	44.0	20.0	28.0	30.0	38.8	8.0	28.0	26.0
2 = 1	NOT IMPORTANT	20.0	12.0	6.0	2.0	18.0	14.0	4.0	4.0	38.0	14.0	26.0
respondent	NEVER CONSIDERED	10.0	16.0	2.0	2.0	16.0	14.0	22.0	10.0	24.0	12.0	14.0
	NOT APPLICABLE	0.0	0.0	0.0	0.0	0.0	0.0	2.0	0.0	0.0	0.0	0.0
MONCK	NO ANSWER	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
	MOST IMPORTANT	4.7	23.3	20.9	14.0	11.6	30.2	16.3	11.6	7.0	9.5	16.3
	VERY IMPORTANT	2.3	14.0	27.9	37.2	16.3	16.3	9.3	27.9	9.3	11.6	20.9
	IMPORTANT	25.6	20.9	25.6	30.2	16.3	30.2	25.6	34.9	23.3	27.9	23.3
2.3 = 1	NOT IMPORTANT	27.9	14.0	11.6	2.3	11.6	4.7	4.7	9.3	37.2	18.6	18.6
respondent	NEVER CONSIDERED	35.9	23.3	9.3	11.6	25.6	13.9	37.2	11.6	18.6	27.9	16.3
	NOT APPLICABLE	0.0	0.0	0.0	0.0	14.0	0.0	2.3	0.0	0.0	0.0	0.0
GOLDEN	NO ANSWER	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
EARS	MOST IMPORTANT	4.0	20.0	0.0	52.0	28.0	28.0	24.0	32.0	4.0	32.0	8.0
	VERY IMPORTANT	52.0	36.0	8.0	20.0	16.0	32.0	28.0	36.0	4.0	16.0	16.0
	IMPORTANT	32.0	12.0	56.0	20.0	36.0	28.0	12.0	24.0	8.0	36.0	24.0
4 = 1	NOT IMPORTANT	12.0	16.0	28.0	4.0	8.0	8.0	8.0	8.0	52.0	12.0	40.0
respondent	NEVER CONSIDERED	0.0	16.0	8.0	4.0	8.0	24.0	28.0	0.0	32.0	4.0	12.0
	NOT APPLICABLE	0.0	0.0	0.0	0.0	4.0	0.0	0.0	0.0	0.0	0.0	0.0

A = Presence of marked trails
B = Safety from motor traffic
C = Presence of washrooms
D = Guarantee of scenery
E = Free entry and use
F = Guarantee of being able to do specific activity
G = Guarantee of rights of access
H = Guarantee of wildlife/ natural features
I = Guarantee of meeting people
J = Convenience of location to home/accommodation
K = Familiarity of location

There was a variance between the sites in the interpretation of the variables 'free entry' and 'access'. At the sites to which people were charged for the use of facilities though not day use, in both Scotland and B.C., a high proportion of respondents selected the 'never considered' or 'not applicable' (B.C.). The response to these variables suggested that individuals interpreted charges as charges for access, being one of the facilities. This was particularly evident from the comments by the backpackers at Garibaldi park who stated that they had no rights of access since the recent introduction of a user-pay system for campers. The charges were actually only there to cover use of toilets and shelters. All of the examples indicated the potential confusion in the minds of the public as to what facilities they were being charged for.

The inclusion of access in the list of reasons raised comment throughout the surveys from respondents and revealed clues as to why the results may have varied between the two case studies. For a start there were more questions from individuals in the B.C. sample. The comments from B.C. indicated that the respondents had made a subconscious assumption at the start of the decision process that identified opportunities within the land resource. The final choice of the location was then being based on the various physical, economic and social constraints on the individual within the perceived "accessible" areas. Examples of this include the conversation of one B.C. respondent from the city park, Swan Lake:

> "We go to where the signs are posted. If you're used to living in a rural area, you're more familiar with Crown land but in the city we just never know what is around us. I never take chances trespassing. What is posted is where I go." (B.C. respondent)

Another respondent remarked that she took rights of access for granted and just went to parks. What seems evident is that there is a subconscious assessment of parks being accessible territory, whether it is a physical accessibility or a legal accessibility; a guarantor of rights, safety or scenery. Access is perceived as one facility within the park concept.

Comments from the Scottish sample seemed to embody some of the same associations with famous pleasure grounds. "[I came here] to see the loch which they say is the loveliest in Scotland." Some comments reflected that access was a consideration in its own rights, independent of scenery or other facilities.

In the Scottish survey a final question was added to try to determine how subtle an understanding they had of their rights of access to the site. This question was probing whether respondents assumed legal or permissive access, and whether they felt access was restricted by time or zoned. The results (Table 5.11) were disappointing in that respondents felt they had a choice between the three variables, so tended to answer just one. However, it was evident that there was an awareness of permissive use, e.g. users in Ben Lomond, Cashel, Rothiemurchus and Goatfell felt they had permissive use to those properties. Users in the Pentlands were aware of zoned access, while the majority of Kelvingrove users assumed they had no spatial restrictions. Though these were broad indications, the results did not point to absolutely clear agreements, and differences in awareness appear to account for this.

Table 5.11 Assumption of rights of access to sites: Scotland

LOCATION	PERCENTAGES TIME			SPACE			LEGAL NATURE		
	N/A	ALWAYS	SOME TIME	N/A	ZONES	EVERY WHERE	N/A	LAW	PERM.& CUSTOM
PENTLAND	4	88	8	15	70	15	27	48	30
KELVINGROVE	-	67	33	28	17	55	23	67	10
BEN LOMOND	13	70	17	30	44	26	21	35	44
CASHEL	23	46	31	31	42	27	15	15	70
ROTHIEMURCHUS	14	63	23	31	44	25	30	27	43
GOATFELL	8	80	12	41	38	21	53	18	29

Note: N/A refers to NO ANSWERS

Access is being linked to certain concepts, whether it is parks, famous areas, or countryside. Kariel introduces the same idea in his study of the use of national parks in Canada (Kariel, 1984).

> "Famous areas, especially those classified as national or provincial parks, are more heavily visited than areas not so classified. It is difficult to separate the effects of park status, especially national parks from the effects related solely to the natural scenic beauty." (p.225)

Likewise, it could be said that it is difficult to separate the effects of status, scenery, being famous or legal access on people's decisions to visit. However, it is evident that access is linked as one facility with other concepts and having been linked, contributes to the opportunity of that area. People have visualised access in some way whether it is as one facility within larger concepts like parks, public land and famous areas or as a separate issue itself. Variations in awareness seem to be related to the degree that they can separate the concept from all the others. In the following questions, the concept is isolated and people are being asked to visualise rights, some for the first

time.

5.6 Results of general access questions

5.6.1 Agreement with the categories of accessibility

The first two objectives of the questionnaire were to test qualitatively the assumptions that had been made about where the boundaries of access opportunities lay and to find out what levels of awareness were to these units,

Question 16 (B.C.) and Q. 13 (Scotland) was aimed at these two objectives. Various options were available for respondents to verify the original assumptions. In the Scottish survey there was a choice of answering the question with question marks indicating that they did not understand what the category of land was. Though this choice was not included in B.C., respondents were able to ask the researcher to clarify points they did not understand. There was also room on both questionnaires provided for comments and questions at the end. The general response of both samples to this question was straight forward. People quickly worked their way through categories and would pause and query certain categories. In B.C., eighteen people asked what institutional land meant, and there were eight respondents who put unsolicited question marks next to institutional land.

In Scotland, two percent put a question mark against regional parks, rural residential, open countryside and abandoned railway. Three percent put a question mark to trust properties and commercial land, five percent to drove roads and seven percent to institutional. These results provide relative indices of what is

understood, certainly not absolute since many were unlikely to admit what they did not know. There were no comments made about the nature of the categories at the end of either questionnaires.

Apart from some of the confusion regarding institutional land, it was felt that the categories provided a workable set of units to which people could usefully apply their knowledge and perceptions of rights of access. The ease in which the question was accepted provided a qualitative test of personal assumptions about what people would understand. It was then possible to look with some criticism at the awareness of access to these units which had been accepted.

5.6.2 Awareness and interpretation of rights of access

The responses to the question established some very clear categories of access (Table 5.12 and 5.13). Similarly, the criteria by which people selected these categories was ruled by some very fundamental principles or rules of thumb. In both samples responses could be categorised into black, white and grey areas of access.

Table 5.12 Percentage of respondents assuming rights of access on foot to each type of land: Scotland

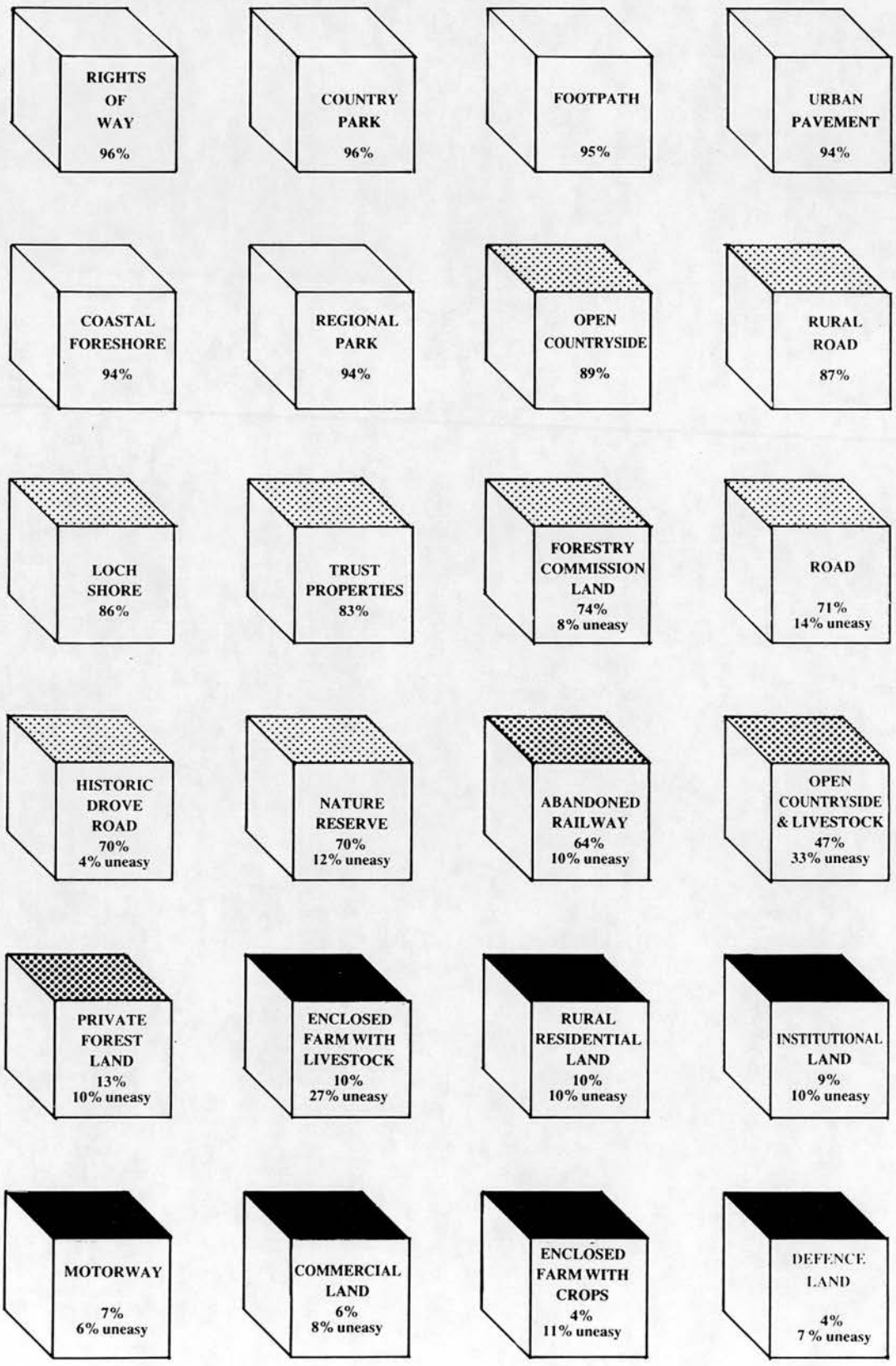
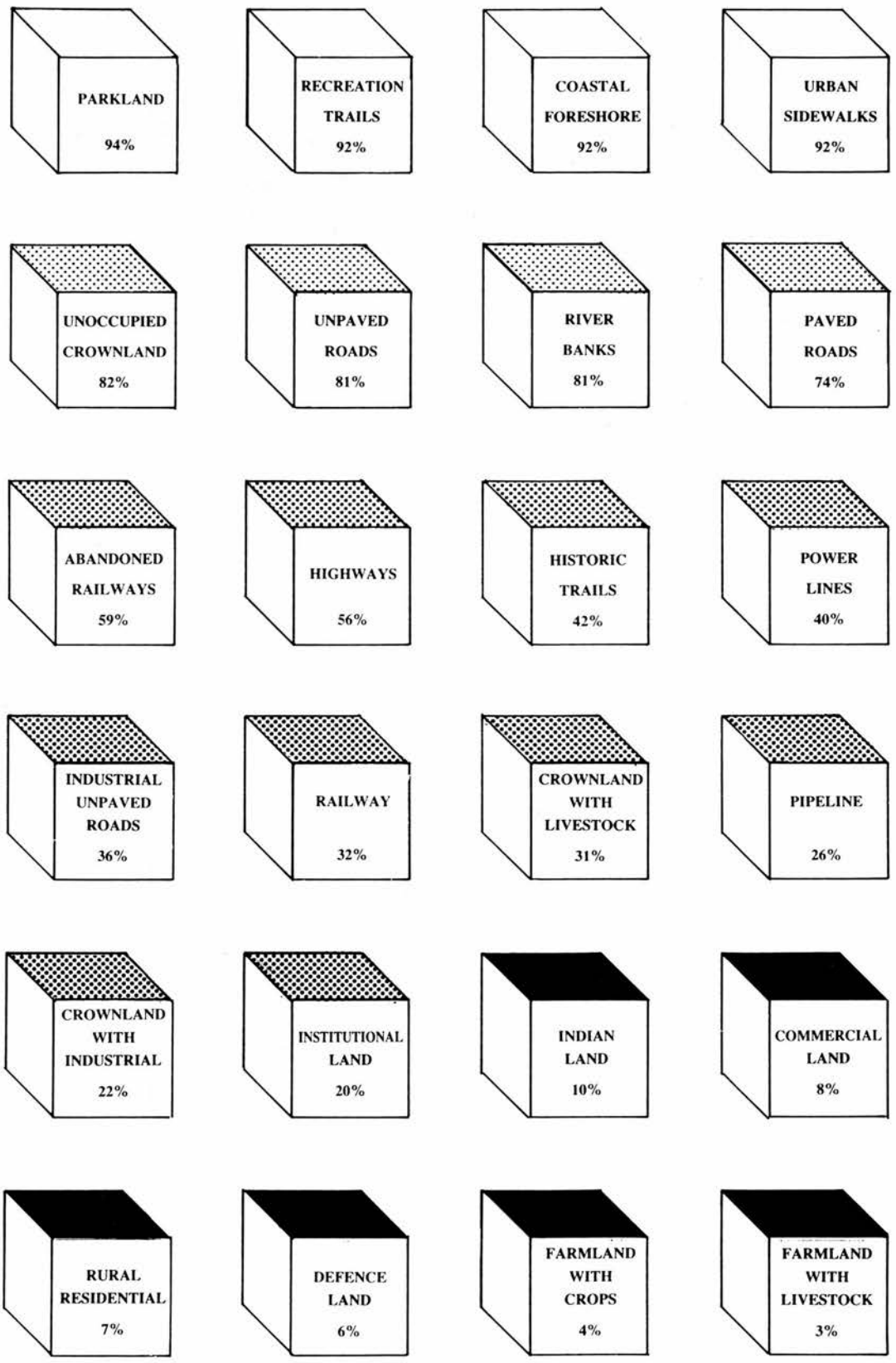


Table 5.13 Percentage of respondents assuming rights of access on foot to each type of land: B.C.



The questionnaire revealed that there were clear rules to all people about some land categories, and less clear rules to some people about the remaining land categories.

In the B.C. context, ninety percent or more agree that they have rights of access to parks, coastal foreshore, designated trails and sidewalks. This compares with the consensus of the Scottish sample that perceive rights to rights of way, country parks, footpaths, urban pavement, coastal foreshore, regional parks and open countryside.

On the other end of the scale, ninety percent or more of the B.C. sample agree that they have no rights to commercial/industrial land for forestry, rural residential land, Indian reservations, defence land, farmland with livestock and farmland with crops. The Scottish sample agree that they have no rights to commercial/industrial and rural residential land, farmland with crops or livestock, institutional and defence land and motorways.

The areas of less consensus in both B.C. and Scotland include all those grey categories illustrated in Tables 5.12 and 5.13. Categories lying near the white end of the spectrum suggest a stronger consensus that rights exist, and vice versa. The Scottish sample included a fourth choice of having rights but being uneasy to walk (Table 5.12).

Both surveys immediately identified the differing levels of interpretation of rights. Respondents from both surveys expressed their views that awareness of legal access was too simplistic.

> "Questions about rights are difficult. I believe we have no rights except public roads and rights of way but are allowed on hills by custom." (Scottish respondent)

> "Don't forget the distinction between what can be legally done and what is done in practice." (B.C. respondent)

These kind of responses served to highlight that there was a range of awareness, from a comprehensive understanding of their legal relationship with these different land uses, to a limited understanding.

> "I was somewhat surprised at my lack of knowledge in Question 16, I had assumed heretofore that I knew." (B.C. respondent)

As discussed in the methodology, questions probing the differences of legal relationships of *de facto and de jure* access proved too confusing in the B.C. survey and had to be phrased in non-legal terms for the Scottish survey. In the B.C. pilot, choices were narrowed down to simply perception of legal rights or not. However, the dialogue generated by respondents on the matter provided some useful insight into the range of perception. The implications of these perceptions on the relationship is dealt with at length in the case studies (Chapters 6 and 7).

In any event, the two pictures of access in the two regions immediately suggest some comparisons and contrasts of perception. There is a predictable similarity of accessible boundaries or public territory: park land, open land, rights of way or roads, and inaccessible boundaries or primary territory: farmland with crops, residential and commercial. Secondary territories also have a similarity about them: government forestry, countryside utility corridors and grazing land. The contrast lies in the different interpretations of access to private grazing land in the Scottish case.

Despite the difference in awareness of access, the broad comparisons suggested that there were certain fundamental

principles inherent to both study areas. In this sense, the third objective was achieved which was to find out what beliefs and principles guided people's attitudes to access issues. Throughout the general questions of access there were opportunities for respondents to comment. The comments provided indications of the beliefs about access and the principles which guided people's answers and the justifications for those answers. Examples of these comments include the following:

> "I never take chances trespassing. What is posted is where I go." (B.C. respondent)
>
> "I have acted on the belief that if fields, although fenced are unploughed or cropped, reasonable access should not be withheld." (Scottish respondent)
>
> "A man's home should be and is his castle." (B.C. respondent)
>
> "Owner's rights!" (Scottish respondent)
>
> "People have a right to work." (B.C. respondent)
>
> "People should be allowed to make a living." (Scottish respondent)
>
> "People should be allowed to walk across land." (B.C. respondent)
>
> "Private ownership should not be used to restrict people - nobody owns the countryside." (Scottish respondent)
>
> "Some people should be allowed access, others not." (B.C. respondent)

Concepts of trespass, ownership, privacy, security, public space, permissive use, common ground, possession and traditional use arise in both cultures and have a wide range of interpretation. These principles of land tenure and control are critical as factors in determining how people perceive access, since the judgement of access to land is bound up in all these other related beliefs and principles. Every question raised some aspect of how these beliefs

and principles were manifest in behaviour and attitudes.

The following section examines how these beliefs and principles influence people's attitudes towards provision or constraints on their access to land through external factors like legal constraints, physical barriers, the imposition of safety and health controls or the protection of privacy. In other words, how they felt about the relationship of recreation with other land uses that imposed these kind of factors.

5.6.3 Attitudes to the Norwegian system of access

Attitudes to the concept of free access to private land for outdoor recreation, as is legislated in Norway under the Outdoor Recreation Act, was introduced in Question 12 (Scotland) and 15 (B.C.) (the Act allows rights of access to all land except that under cultivation or within 150 metres of a private residence). People were asked whether they would agree to such an act on a scale from strongly agree to strongly disagree. The range of replies and accompanying comments raised similar themes in both surveys. Table 5.14 illustrates the responses to this question.

Table 5.14 Agreement with Norwegian system of access

ANSWER	LOCATION													
	SCOTLAND						BRITISH COLUMBIA							
%	PH	KG	BL	CC	RE	GF	SL	WL	RP	GP	AL	MP	GE	
NO REPLY	3	-	-	4	4	-	12	10	5	2	-	-	4	
STRONGLY AGREE	37	39	48	27	25	38	24	30	24	30	9	12	25	
AGREE	37	50	30	48	54	32	35	45	42	28	40	48	29	
DISAGREE	20	11	22	15	13	24	17	10	21	22	28	36	21	
STRONGLY DISAGREE	3	-	-	6	4	6	12	5	8	18	24	4	21	

In B.C. 7% made comments compared with 28% in Scotland. Open comments were typically provisos accompanying agreement with the Act. They felt that it was a good idea in principle but issues of privacy, protection of land for conservation, husbandry, management and irresponsible use and vandalism issues had to be considered. Some felt that it was unfeasible simply because of the higher proportion of people to land area. Some people relate the principle to their own experiences.

> "depends if I had more than 150 metres around my house" (B.C.respondent)

> "If I had land I wouldn't want people trooping through" (Scottish respondent)

> "wouldn't it be nice, we can legalise access, but can we legalise respect." (B.C. respondent)

> "Being a Norwegian... and a landowner, I believe our system educates people to behave in Nature." (Scottish respondent)

It is difficult to determine what type of judgement of the Act is being made: judgement of the principle or judgement of its application in Scotland or B.C. The question was designed to elicit response to the principle but the points raised about

implementing such an act in Scotland and B.C. were interesting in their range, from the problems of enforcement to questions of liability. A Scottish respondent felt that there were more restrictions under the Norwegian system than in the present Scottish system.

5.6.4 Knowledge of trespass law (Scotland) and Crown territorry (B.C.)

Question 10 (Scotland) asked whether respondents believed that the following statement was correct: there is no law of Trespass in Scotland. Table 5.15 presents the response to the question.

Table 5.15 Belief that there is no law of trespass in Scotland

VARIABLES	RESPONSE %
N/A	1
YES	38
NO	32
DON'T KNOW	7
ONLY FAMILIAR WITH ENGLISH LAW	22

There was no consensus of opinion, though four types of comments came from the 20% who added comments. Some provided a summary of what they understood the law to be.

> " I think you can be prosecuted if you refuse to go when asked." (Scottish Respondent)

> "Aviemore police told us we were free to wander the hills." (Scottish respondent)

Some provided their experiences that suggested the comment to be incorrect.

"Land is wired off with no ability to get across." (Scottish respondent)

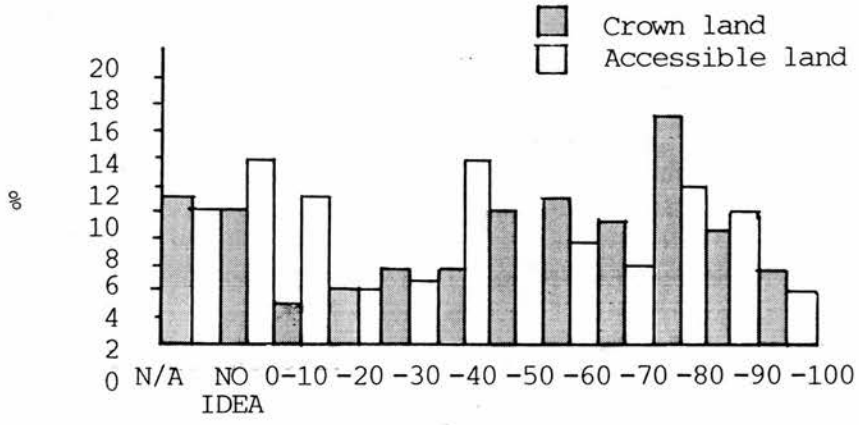
"I see signs saying NO TRESPASS" (Scottish respondent)

"People shout at you and intimidate you." (Scottish respondent)

Some commented on the status quo. It is evident that there is not a consistent and clear idea of the trespass law and people adopt a variety of different rules of thumb, principles, and observations to judge what their accessibility to land is.

The question directed at testing British Columbians' knowledge of the percentage of Crown land in the province and the percentage of accessible land also suggested a wide range of interpretations (Table 5.16) and there was no broad consensus of perception, with estimates ranging from 5% to 90%.

Table 5.16 Perception of Crown land and accessible land in B.C.



Surprisingly, no respondents actually knew the correct figure they were all underestimates. Similarly, the estimates for accessible land were far ranging and reflected the perceptions of Crown land, by being correspondingly lower. This wide interpretation of Crown land is important in view of the assumptions that are made of public attitudes about Crown land and Crown management.

5.6.5 Experiences of personal restrictions of access by respondents

Question 14(Scotland) and Question 17(B.C.) asked for people's experiences of being restricted for entering or passing across a tract of land where they assumed they had access.

5.6.5.1 Experiences of personal restrictions of access by respondents in B.C.

In B.C., 19% of the sample described incidents of restricted access, most of them occurring in B.C. Incidents occurred on riverbanks, and land between roads and riverbanks, unfenced grazing land, foreshore, parks, recreational trails, utility and railway corridors. Most of these incidents reinforce the assumptions made of rights to land that were expresssed in Q. 16. One comment reflected a common sentiment expressed by respondents: "I don't go where I don't think I can go." These results were substantiated by the results of the Access Hotline held in B.C., the previous summer. The following discussion examines the experiences of restrictions had by people replying to the Access Hotline.

5.6.5.2 Access Hotline (B.C.)

The questionnaire results were very similar to the responses to the Access Hotline (see description in 2.2.4.3). The Access Hotline was set up by the Outdoor Recreation Council to monitor experiences of blocked access by members of the public who responded voluntarily to a newspaper enquiry of blocked access Thirty responses were available for analysis. Six of the respondents were members of outdoor organisations. The remaining twenty-four were obviously members of the public who participated actively in various outdoor pursuits. Most of the conflicts originated in the Lower Mainland or Okanagan, though there were responses from the Cariboo, Kootenays and Chilcotin. Twenty-five of the conflicts concerned the restriction of vehicular access to a lake, mountain or recreation area, by private owners or lessees. Five of the conflicts involved prevention of pedestrian access to perceived public domain such as lakes.

Two of the conflicts involved the purchase of land surrounding provincial parks, Valhalla Provincial Park and Sooke Mountain Park. Road access to parts of these parks was blocked by gates at property lines. Fourteen of the conflicts involved the vehicular restriction to lakes, rivers and hunting areas.

The remaining nine vehicular access conflicts included blocked access to caves, a watershed, ski trails designated by the Forest Service and built by a ski club, and an alpine mountaineering cabin. The pedestrian access conflicts included blocked access to foreshore, backcountry by "cowboys at gunpoint", public trails, lakes and dykes.

The survey is significant in that individuals are identifying

the public domain or destination of their activity. Features such as mountains, caves, trails, lakes, parks and foreshore are perceived as accessible. This strengthens the findings of the survey as to what is perceived as accessible territory by British Columbians.

There is also an absence of conflicts within perceived public domain itself (except for the backcountry hikers and the cowboys), which illustrates the nature of the recreational patterns of British Columbians. Public domains are isolated and connected by transport corridors; legal easements have reserved corridors or rights of way between one public place and the next. The powerful potential of gatekeeping is challenged when the individual knows he is within his/her rights to demand access to their territory behind the gate. The users are arguing on the basis that they cannot get to where they know they can be, which is perceived as a fundamental wrong. They are not arguing on the basis of asserting rights of access beyond the boundaries of their territory.

Most of the complaints were supported by arguments for clarifying legal rights of access and removing the need to negotiate permissive use between the controller and themselves. This follows traditional B.C. land policy which has isolated parcels of land, connected by corridors, to which the public either claim possession or not. They identify recreation as a best and single use of land, and demand common law principles of reserving rights of way be employed to give access to this land that is secure, i.e., the continued polarisation of uses. The responses suggest one of the most dynamic areas of the relationship will be where the occupiers or managers of land attempt to alienate public

lands by the powerful mechanism of fencing and perceptually blocking key lands, vehicular access being the critical factor.

From the location of these conflicts, it appears the public will push for increasing formalisation of rights at specific sites through the existing legal mechanisms. There does not seem to be any indication that the public will pressure for any fundamental changes in the legal principles or attitudes by which land is made accessible.

5.6.5.3 Experiences of personal restrictions of access by respondents in Scotland

In Scotland, 22% of the sample related incidents of being restricted to different land categories. It was evident that people perceived restrictions in a variety of forms. They related incidents of being restricted by verbal warnings, physical barriers like the construction of fences, signs, disrupted footpaths, tree farming, and even helicopters chasing them. Areas listed included 12 on footpaths and rights of way, 3 on Forestry Commission land, 2 on foreshore, 4 on land with a dog, 15 on farmland, 1 on defence land, 9 on country estates, 1 on trust property, 1 on a rural road and 10 incidents that took place in England. Again, these areas correspond to perceptions of what is accessible land for Q. 13. The means by which people assess a restriction is also siginificant, as it can be manifest in a number of physical objects and social encounters.

5.6.6 Attitudes to economic value of access

Some perceptions regarding the concept of the economics of

access were solicited in Q. 13 and 14 (B.C.) and Q.16 and 17 (Scotland). These questions asked whether respondents would pay directly for access to land or indirectly through taxes, if existing opportunities were not satisfactory. In B.C., Question 13 was directed towards access to private or leased land, while Question 14 was designed for the subgroup who had indicated that they were not willing to pay directly for access to private or leased land.

More than half of the respondents demonstrated a willingness to pay directly if opportunities provided by the public sector were not satisfactory. The 35% that followed their reply with a comment, whether affirmative or negative, fell evenly into three different groups: 1) those who would patronise commercial ventures provided the price and/or the standards were comparable; 2) those who would not support commercial ventures; 3) those who indicate their preference for the public provision of access.

The interpretation of access in this instance clearly varied with the type of user. In the B.C. survey, many of the sample were from overnight camping facilities where a fee was charged for use of facilities. In conversation, people remarked that they believed that the provision of access to the land was part of the facilities they were paying for, even though these provincial parks did not charge for public access but for the toilet facilities, camping spot and garbage disposal. Therefore, these people were expressing their attitude that as long as facilities were comparable they would camp in a commercial or public campground.

On the other hand, casual day walkers, hikers and those with little demands on facilities, interpreted access as the right of

movement across the land. The two views represent the division in willingness to pay. Those who interpreted access as entry to land made comments such as "under protest", "it should be a right", I'm a Canadian, I should not have to pay!" "Let the government appropriate".

Some produced both practical and ideological arguments in their interpretation of access and their propensity to pay.

> "If used for maintenance, not profit." (B.C. respondent)
>
> "If really necessary though the mechanics of doing so would detract from the spirit of things." (B.C. respondent)
>
> "I derive a tremendous amount of satisfaction from provincial parks such as Garibaldi- but am unable to put a price on that satisfaction. I feel areas such as this are priceless with increasing competion with other uses. How I can pay that much?" (B.C. respondent)

In Scotland, 56% replied that they would not pay, 34% would pay and the remaining 7% replied that they would but through car parking, footpath repair funds, support groups and trusts or if there were facilities. Again the division of response lay between those who were reliant on facilities and perceived access as part of the facilities they would pay for and those who were not reliant on other facilities.

On the question of taxes, in B.C., this question was designed for the subgroup who had indicated that they were not willing to pay directly for access to private or leased land. More replies than the 40% who qualified for this question were recorded. The varying results reflected again the interpretation of the term "access" as well as indicating public attitudes to government provision of access opportunities. Forty two percent replied that they would be willing to pay through taxes, while 30% of the sample

replied in the negative. The ideological and practical arguments to this question fell into several categories: 1) some felt they were already paying enough; 2) some supported the user-pay system for access and facilities; 3) some voiced their lack of confidence in government provision of simple access; and 4) some felt it a complete government responsibility.

The comment, "prefer taxes on day parks - charge for camping", reflects the attitude that recognises some public obligation to protect rights of access for informal use but not extending to the provision of facilities for camping. This concept is echoed by another group of comments summed up by: "Canadian parks are our treasure - I would pay for wilderness preservation" (B.C. respondent).

A general point raised by those using the overnight facilities for car-camping in the parks was that the authority managing the camping premises was not important, provided standards and prices were comparable. However, the authority of parks to provide areas of free access and/or conservation areas was important to preserve rights of access to land in perpetuity.

The Scottish question on taxation elicited very similar replies and concerns. Fifty-five percent replied that they would pay taxes to secure access if existing opportunities were not satisfactory. Thirty-six said they would not. Again the ideological and practical issues and concerns were: 1) little faith in government allocation of taxes; 2) belief in the user-pay system for facilities associated with access to the land, e.g., carparks and toilets; 3) some felt they were already paying enough.

Comparisons between the two surveys do not uncover any

significant differences in attitudes (Table 5.17). British Columbians are more willing to pay directly and Scots more willing to pay through taxes, however, given the greater proportion of car-campers in B.C. who interpret access as a park, then this is not surprising and more likely to be a reflection of this factor than cultural factors, for example, only 30% of respondents from Witty's Lagoon (day walkers) were willing to pay directly.

Table 5.17 Comparative willingness to pay directly or through taxes for access.

ANSWER	REPLIES %			
	SCOTLAND		BRITISH COLUMBIA	
	DIRECTLY	THROUGH TAXES	DIRECTLY	THROUGH TAXES
YES	34	54	49	42
NO	56	36	43	30
N/A	3	3	8	7
QUALIFIED	7	7	*	**

* Note: No option for qualifiying choice was provided in the B.C questionnaire, comments were asked for in a separate question.
** Note: Only a subset (79%) of the sample answered the question regarding payment through taxes, i.e., those who indicated that they were not willing to pay directly for access to private land.

Questions of the economics of access raised very quickly emotive and ideological issues of rights of movement on the one hand to the user pay philosphy on the other. Many individuals expressed their concern that the conservation of wilderness reserves, open country and nature reserves was dependent on an economic competition with other land uses and that access to land had to have a price put on it. These kinds of considerations

probed the heart of many of the issues later studied, e.g., whether a right could coexist with a financial payment and whether access was a right or a privilege in people's minds.

5.6.7 Awareness and attitudes towards restrictions of access

More attitudes concerning first principles were examined with the final questions addressing awareness of legal restrictions and attitudes towards these restrictions in Q. 18 (Scotland) and Q.20 (B.C.).

In B.C. ten scenarios of legal restrictions were drawn from actual situations, for instance clauses within the Ecological Reserves Act, Trespass Act, Heritage Act, Grazing Act, Forest Act, Land Act, Parks (Regional) Act and bye-laws under the authority of the managing interests, e.g., park authorities. In the Scottish survey, seven scenarios were drawn from the Wildlife and Countryside (Scotland) Act, Trespass Act and Forest Act.

The scenarios were selected for their relevance and topicality to integrated land use issues. From these laws it was hoped to cover a broad range of land uses that would be relevant to recreational interests and introduce the various issues of ownership, conservation, maintenance of livelihood, safety, privacy and rights of aboriginal people. The main purpose of the question was to gather the range of opinions that people had in agreement or disagreement with the restrictions listed. In the B.C. questionnaire, choices were given of 'yes', 'no' and 'yes, with reservation' plus a space to comment. In the Scottish questionnaire, choices were simply 'yes', 'no' and a space to comment, in order to draw comments that reflected justifications of

the restrictions.

Table 5.18 presents the results of the first part of the question, in both surveys, examining each individual's awareness of laws. The diagram ranks the responses to the question in order of the greatest percentage of affirmative replies. These results verify the findings of Question 16 (B.C.) and Q. 13 (Scotland) in that the most well-known laws apply to the categories of land that are the most clearly perceived as accessible or not accessible.

Table 5.18 Awareness of legal restrictions of access to each type of land

BRITISH COLUMBIA	% OF RESPONDENTS AWARE
PRIVATE LAND	91
INDIAN RESERVATION	81
PARK LAND	67
HERITAGE SITES	65
FORESTED CROWNLAND	64
CROWNLAND UNDER LEASE	62
ECOLOGICAL RESERVES	62
GEOLOGICAL RESERVES	55
FORESHORE UNDER LEASE	52
GRAZING UNDER LEASE	41
SCOTLAND	
PRIVATE LAND	88
NATURE RESERVES	86
ARABLE LAND	80
GRAZING LAND	80
STALKING LAND	75
WATER CATCHMENTS	72
FORESTRY COMMISSION	71

Overall, there was a great similarity between themes and principles raised by respondents. This question for all the scenarios in B.C. and three scenarios in Scotland (water catchment

areas, nature reserves and private land), raised the idea of absolutes, i.e., complete restrictions to land for a variety of reasons. The responses to scenarios of absolute restrictions tended to be seen as justified only on the grounds of health, hazards, safety or ecological reasons. Even with respect to private land ownership, the majority view voiced their reservations to absolute restrictions and preferred to see access channelled spatially to linear routes or zones, or temporally to certain times, and seasons, to modes of passage, for instance restricting motorised use, and by having permits, guides and educational/interpretive aids.

Those individuals who felt absolute restrictions were justified, in most cases, argued their positions on the principle of private ownership and/or distrust of public behaviour. Some general comments were made regarding the rights of ownership, as the following comment illustrates:

> "This question seems primarily concerned with rights of access without due consideration to rights of ownership." (B.C. respondent)

The third part of the question solicited personal comments on the restrictions (Table 5.19). Comments from 27% of the sample in Scotland and 26% in B.C. reflected four attitudes to absolute restrictions to ecological reserves: 1)absolute restrictions are justified because of a need to have total protection of ecological habitats; 2) people should be directed by education not law; 3) people should have some kind of access to nature reserves whether it is simply visual access and channelled to trails, non-breeding seasons, or with a guide; 4) certain people should have access,

e.g., permit holders, researchers, educational groups.

Table 5.19 Attitudes to restrictions of access to each type of land: Scotland and B.C.

LAND USE	% OF RESPONDENTS WHO FELT RESTRICTIONS JUSTIFIED	% WHO FELT UNJUSTIFIED
SCOTLAND		
NATURE RESERVES	93	4
ARABLE LAND	92	4
FORESTRY COMMISSION	91	5
GRAZING LAND	88	8
PRIVATE LAND	84	12
WATER CATCHMENTS	72	20
STALKING LAND	57	38

BRITISH COLUMBIA	% JUSTIFIED	% RESERVATIONS	% UNJUSTIFIED WITH COMMENT
PRIVATE LAND	68	20	8
PARKLAND	66	12	13
INDIAN LAND	63	12	10
ECOLOGICAL RESERVES	62	34	4
HERITAGE LAND	56	30	8
LEASED CROWN LAND	50	25	19
GRAZING LAND	48	27	18
FORESHORE	44	23	18
FORESTRY LAND	42	24	25

Note: The sum of each line equals the percentage of respondents who answered the question.

A minority of 48% of the B.C. sample felt that absolute restrictions of access to Crown grazing land were justified. The remainder expressed reservations that fell within one or more of these categories: 1)there should be some public access within these lands; suggestions were made for channelled, zoned, seasonally and temporally restricted access; 2) there should be some public access but restricted to certain users; suggestions were made for

restricting vehicular access or permitting holders of permits or club members only; and 3) restrictions on public access should be dependent on the conditions and payment of the lease, reasons for the lease and area leased.

The Scottish question on grazing land was asking for attitudes towards seasonal or temporary restrictions. Eighty-eight percent felt that these temporary restrictions were justifiable on the grounds of protection of animals especially during breeding season and if users had dogs. Eight percent felt it was not justified in all situations.

The B.C. question on attitudes towards restrictions regarding heritage sites had a majority of 56% who felt restrictions justified. The rest of the sample felt that some kind of channelled and visual access was important.

> "There is no point in having heritage sites if there is no access to them." (B.C. respondent)

Attitudes towards restrictions to private land were asked for in B.C. in an absolute sense and on a temporal basis overnight in Scotland. B.C. attitudes fell into three categories: 1) the need to retain recreational right of ways across land or to natural features such as beaches and rivers, lakes and mountains; 2) access should be allowed outside the vicinity of the home and buildings; 3) private property was sacrosanct, on the grounds of privacy, protection of property and/or safety.

Scottish respondents, given the less absolute nature of the question, felt that the restriction was justified. Twenty-seven percent made comments that considered the ability of users to obtain permission, the size of property, and the owner's rights.

Restrictions to forestry land were presented in a question in both Scotland and B.C., though laws can enforce temporary restriction in Scotland but can restrict completely in B.C. In both cases, if respondents felt restrictions justified, the attitudes were based on practical reasons of safety, fire hazards and the potential for damage to forests and seedlings. In B.C. the majority felt absolute restrictions unjustified and felt that there had to be channelled or zoned access. Many of the attitudes expressed stemmed from attitudes towards the forest industry.

> "logging B.C. style leaves little for the recreationist."(B.C. respondent)

The relationship of recreation with water catchment land use was raised in the Scottish survey. 78% of the sample felt absolute restrictions were justified but 22% made comments that were split between the practical task of maintaining water quality and their view that it was unnecessary or extreme given other factors.

Scottish attitudes towards seasonal restrictions to arable land were unanimous in the view that livelihoods and crops had to be protected, and some provisos were made that they were justified as long as farmers did not abuse the restrictions. However, regarding the attitudes towards seasonal restrictions to land used for stalking, there was much less of an agreement. People felt the restrictions were not justified on the grounds of the nature of the activity. Stalking and shooting were seen as minority privileges. Some comments justified the sports on the grounds that they kept the land accessible for the rest of the year or maintained local employment. These comments were not so much justifying restrictions but the use of land itself.

The rest of the scenarios concerned B.C. only and included

restrictions to foreshore, geological features, leased Crownland, and Indian reservations. Attitudes paralleled those already expressed, the need to provide some sort of channelled access, the role of education over legislation and the possibility of permissive or guided access.

5.7 Summary and application of results

This summary of results and attitudes will be used in the case studies with reference to how perceptions and attitudes influence the relationship across the land resource. Two important points gleaned from these questionnaires were, 1) the existence of related concepts which carried with them assumptions of access and, 2) the existence of basic principles and experiential 'rules of thumb' with which people use to base their decisions and form attitudes. The ideological and philosophical judgement of these principles was what constituted differences in attitudes. There was no startling difference between the pragmatic concerns of access to hills from a Scottish hill walker and a B.C. backpacker, though there may well have been philosophical differences over attitudes to restrictions of access to public land between two British Columbians in adjacent tents.

CHAPTER 6

CONTEMPORARY ACCESS ISSUES AND MANAGEMENT IN SCOTLAND

6.1 Introduction

Contemporary access issues in Scotland relate directly to their historical evolution as discussed in Chapter 4. The questionnaire survey of Scottish users in Chapter 5 reveals the range of perceptions of accessibility and the ambiguity of access to many different types of land. This chapter explores the implications of these perceptions, attitudes and the development of access in the contemporary context. The discussion concentrates on the issues and management of recreational access to each land type within the three categories of accessibility, beginning with the white areas. The summary at the end examines the total pattern of accessibility in the land resource.

6.2 White areas of accessibility

6.2.1 Introduction to white areas

Areas to which the public perceive they have access through clear societal rules included: rights of way, country parks, footpaths, urban pavements, coastal foreshore and regional parks (as in Figure 5.12). All these lands and corridors, with the exception of two thirds of the total foreshore, and "permissive" footpaths are under the management though not necessarily control of local authorities.

Local authorities are generally perceived by the public as the controllers of the land. By formalising opportunities for the

public, they are removing land out of private management and putting it into public use for recreation. The public perceive this process as one of creating formal opportunities like parks.

Three different processes have evolved to create formal access opportunities to the public: 1) acquisition of land and putting it into public ownership and management so that accessibility is influenced by the demands of the seekers and the objectives of the State; 2) vesting rights of access to the public within private properties creating a formal relationship between the State, the users and land controllers; 3) designating through planning law so that real rights of owners to convict trespassers or change the amenity are restricted (which also maintains a relationship influenced by all three parties).

These processes of change are influenced by the three groups in the following ways: 1) by the attitudes of **both** the affected controllers and other controllers of land to the processes; 2) the different statutory powers that exist and their implementation by local authorities and central government; 3) the public perceptions of access to land once designated and their lobby for or against these formalising powers. The following section looks at these three factors.

6.2.1.1 Controlling attitudes

The strongest pressures that come to bear on moving land into public territories, recognised by local authorities and central government planning authorities, are those coming from other controllers of land (Anderson, int., 1985). Local authorities are largely influenced by the arguments presented by other landowners

who provide land for recreation whether they have commercial or philanthropic objectives.

The largest balance of land used for recreational purposes lies in the secondary territory where landowners to some extent practice a tolerance towards public use. Tolerance provides the most flexibility to the landowners since they retain the control of land and can manage use through their own channels. Where pressures on the land develop from recreational use, then the arguments for State subsidy for the costs of recreational access are taken up. Scottish local authorities recognise the importance of retaining local permissive use of private land and other State lands, e.g., Forestry Commission land, since that avoids both the initial purchase, or exercising of any statutory duties, and later maintenance costs to the taxpayer. The processes of change are dictated by the desire of local authorities to achieve a balance of encouraging tolerant landowners to keep gates open, while not undermining the viability of commercial or charitable marketing of access, and providing publicly managed facilities at pressure points.

Land controlling interests directly involved with designation or acquisition make the assumption that any local government provision will carry with it the belief of public access and create greater use than traditional *de facto* use (discussed later with reference to regional and special parks). Depending on whether this is perceived as a desirable or undesirable objective, attitudes to provision have adjusted accordingly. Attitudes to recreation were strongly influenced by the theories of the "coming of Armageddon" (Arbuthnott, int., 1985) in the 1960s, developing

from the Fourth Wave theory (Dower, 1965) and the increase in car ownership and mobility. This 'defensive' attitude has been largely tempered by the last two decades and the development of the countryside as a market-place for leisure activities and tourism. Attitudes towards recreation have diversified at the same pace as the structure of land uses.

Landowning/controlling attitudes are discussed at length in Section 6.3 with respect to 'grey' areas, but this summary introduces the range of attitudes that have influenced the development of very bland policy and legislation regarding formal access.

6.2.1.2 Changes in legislation and policy

The response in planning legislation to these land controlling attitudes was a relatively safe road of purchasing pleasure grounds and alienating certain rights for the public derived from the historical principles of setting aside land. Despite the fears of "Armageddon" the pressures perceived by landowners for public provision of space from the recreational users have been relatively small (Arbuthnott, int. 1985). The establishment of the enabling body of the Countryside Commission for Scotland (hereafter CCS) in 1967 represented the governments' identification of a need to prepare for increased use as well as the protection of landscape. As a result, the pressures or incentives for local authorities to extend provisions have developed primarily from the recommendations of the Scottish enabling body.

Local authorities exercised new and old statutory powers to increase the percentage of public land lying within local authority

ownership and/or management. The statutory authority for urban parks already existed and was simply developing from the historic processes set down by the Public Health Act in 1867. While in the 1967 Countryside (Scotland) Act, these powers were extended from urban pleasure parks into urban fringe areas under the title of 'country parks' (see 6.2.2.1) with the factor of vehicular accessibility from urban centres to these parks a key attribute in the concept.

Through reorganisation of local authorities and their departments, new national planning guidelines and legislative changes, from 1975 onwards, opportunities have opened up for extending these formal access arrangements within the rural and town areas. The reorganisation was intended to place the responsibility of recreational provision in a variety of different departments and establish 'corporate planning'.

The traditional powers to implement and maintain rights of way, and duty to provide urban parks, pavements, allotments, burial grounds, gardens, market-places, and other open spaces (Walker and Duffield, 1983) were supplemented by new powers to establish primarily formal recreation areas and corridors to protect access, including, walkways and pedestrian areas (see 6.2.2.6), long-distance footpaths (see 6.2.2.4), canal pathways and waterways (see 6.3.4.4), local nature reserves, reservoirs, coastal and lochshore picnic sites (see 6.2.2.7), abandoned railway corridors walkways or cycleways (see 6.3.4.3) and reclaimed land for recreational sites (see 6.3.4.6). They have all become signed formal areas for recreation with the provision of public access under local authority jurisdiction.

The legislative changes of the Countryside (Scotland) Act, 1967 and Wildlife and Countryside (Scotland) Act, 1981 have extended traditional powers to acquire land, to developing various aspects of multiple tenures or placing restrictions on private land in return for reimbursement, under 'management and access agreements' with landowners. Access agreements were designed "for the purpose of enabling the public to have access for open air recreation to open country" (CCS, 1986a, p.5). Management agreements were designed "to conserve or enhance the scenic interest or to improve opportunities for the public to enjoy the countryside" (CCS, 1986b, p.i). These agreements have been used to some extent with relation to long-distance footpaths (see 6.2.2.4) and regional parks (see 6.2.2.2) but have been unpopular and problematic to implement, as the discussion with relation to these designations demonstrate later.

Noticeably absent from legislative developments, have been powers to create national parks. The concept of 'national' parks had been around in England since the American models early in the century had created an interest in the concept. With the 1947 National Parks and Access to the Countryside Act in England and Wales, British models existed but the concept failed to gain the political and public support in Scotland for various reasons, despite the recommendation of the Scottish National Parks Survey in 1945 for five national parks in Scotland: Loch Lomond/Trossachs, Glen Affric/Strathfarrer, Ben Nevis/Glen Coe, Caringorms and Loch Torridon/Loch Maree. Grieve (1985) points out the historical context of the debate over the parks, and the nature of the "Highland Problem" (p. 41).

Conflicting attitudes towards the function of the parks between the 'naturalists' and those who saw parks as a tool for socio-economic development were a major factor in the failure of the national park concept to take hold. Furthermore, arguments were put forward on the basis that first, substantial forest parks and National Trust mountain properties already existed, second, there was not enough political will, and third, that the effect of formalising access on landowning attitudes could reduce tolerance outside of the parks (Cherry, 1975).

The concept of national parks was set aside for the much less politicised designation of 'National Park Direction Area', which was simply a planning tool for central government to maintian a loose vigilance. There were no powers enabling or influencing access, neither were the boundaries represented on maps for the public, and the potential for interpreting access into the concept never arose.

Twenty years later, the concept was raised again within legislative recommendations for a park system based on adaptations from the classification and standards of the American Outdoor Recreation Resources Review Committee Report (ORRRC, 1962) to the Scottish experience. Taking into account the public landownership structure, a final park system was proposed (CCS, 1974). The system consisted of four types of parks to supplement the existing infrastructure of local authority provision: urban parks, country parks, and the two new tiers, regional parks and special parks.

The new tiers of parks, regional parks (see 6.2.2.2) and special parks (see 6.2.2.3; also Table A2.5 in Appendix 2 for area of land involved) were visualised as both landscape and

recreational planning concepts, through the use of both access and management agreements to integrate recreation and/or conservation with other viable land uses. The statutory authority to create regional parks came in the 1981 Wildlife and Countryside (Scotland) Act while special parks still have no legislative designation.

Finally, there have been designations for landscape protection under the titles of 'Environmentally Sensitive Areas' (ESAs) and 'National Scenic Areas' (NSAs) (again refer to Table A2.5 in Appendix 2 for relative areas in terms of size), which have been management concepts using consultative procedures for development control and payment through compensation. These have had no role in the provision of access, but within the concept of ESAs, there is the identification of restricting access to protect very sensitive areas.

In general, legislative powers have been adapted where the procedure has been similar enough to city park procedures to be unproblematic. The scale of country parks, for example, is small with just over thirty country parks, under 400 acres each, constituting the greatest proportion of new lands. As these parks reach a saturation point within the administration of the local authorities or the areas that they were intended, the provision of access elsewhere becomes a problem.

The relatively difficult implementation of the powers to integrate recreation into roads, regional and special parks, urban fringe, etc. have been due to the complexity of these concepts of multiple tenure and divisible rights and constraints, when recreational value remains indeterminate.

Local authorities examining the deeper issues of recreational

access have found the procedures time-consuming, expensive and complex as they serve to determine the balance of public and private interests and costs (Crofts, int., 1985). With a system that is not black and white, implementation has proved difficult as the discussion on each of the designations illustrates.

6.2.1.3 Public attitudes

The surveys suggested that the public do not have a clear understanding of the differences between these designations, especially with regard to their accessibility. The diversification of these new planning designations are unlikely to have filtered into public understandings. The local authority is typically seen primarily as a landowner with managerial obligations. Respondents interviewed in regional parks and city parks perceived their rights of access as legally defined stemming from public ownership. The discrepancy between whether land is owned privately, but managed by the local authority under an access agreement placed on it, or if it is owned and managed by the local authority under a management agreement is not obvious in a physical sense to recreationists nor does it concern them usually. But the implications of this are manyfold.

Permissive use of footpaths relies on a mutual respect of seeker with controller. This permissive use can be withdrawn with changes in economic use of land, a change in the owner's attitudes or a change in the ownership. If permissive use is withdrawn, then the seeker may interpret this as a change to a public right of way. Another source of conflict has resulted when a local authority has only a management agreement over land designated as a park.

People assuming access all over the land as a pleasure ground will not be perceiving the need to respect the controlling interests in the land, for instance, farming, and assume the land as public (this is discussed at length in the Pentlands Regional Park case study, Section 6.2.2.2).

As a result of these types of conflicts, further public pressures have come to bear on this relationship. Minority pressure groups with a great deal of awareness of the issues have developed various arguments that consider the implications of formalisation to the existing supply of land for recreation (Anderson, int., 1985; Prior, int., 1986). Since their arguments are often specific to particular designations, they are developed further in the discussions on long-distance footpaths (6.2.2.4) and regional parks (6.2.2.2).

In short, the arguments are based on two conflicting fears stemming from the historical tradition of landowning tolerance and ambiguity of access to the open countryside. Fears are that the subsidy of some areas will reduce the likelihood of tolerance from landowners who are not subsidised and so upset the balance of *de facto* access. On the other hand, they fear that unless some constraints are put on controlling interests, changing land uses in the countryside will reduce the opportunities anyway.

Further arguments stem from the impact on public attitudes by formalising access. By developing a tradition of formal use in the countryside like the cities, public expectations are developed for single use areas, packaged for access and amenity. The objectives for furthering these arguments by pressure groups range from conservation lobbies to traditionalists. These kinds of pressures

are beginning to develop with large scale changes in the use of the land as discussed within the grey areas of accessibility (6.3).

6.2.1.4 Managerial attitudes

Faced with these conflicting pressures, and a large role to play in addition to all the other civic functions in their remits, local authorities face the most fundamental problem of integrating recreation with land uses, the complexity. They have the only true integrating role within the sphere of public land managers, in the sense that they have to allocate different uses into a geographic pattern that achieves optimal benefits. However, local authorities have been dominated by the historical principle of "appropriate use" (CCS, 1987c). With seemingly conflicting principles of appropriate use and integration through fragmentation of ownership privileges which has so many manifestations, local authorities are finding it difficult to implement these powers. They are faced with having to balance the varying arguments and demands of seekers and controllers. Their attitudes to this dilemma have been varied.

Attitudes of managerial authorities can be summarised on two levels. On the first level, both central government advisory agencies and local authorities have given consideration to ways of integrating recreational use and protecting amenity, evident from the new legislation. This suggests a degree of awareness regarding accessibility which in fact supercedes general public awareness. Since the influence of the English experience has been so strong this is hardly surprising where there is much greater pressures on the land and "a more powerful, well-organised walking public" (Langmuir, int., 1985). Given this level of awareness, attitudes

are influenced by three dichotomies.

One of the most critical factors has been the desire to maintain flexible relationships with landowners, but avoid fiscal commitments to them in the form of compensation for access. The second factor has been the shifting responsibilities of the local authorities that, on the one hand, have been increasing and diversifying and, on the other hand, are being rationalised off into the private sector. This has been accentuated by political swings within district and regional councils, as well as on a national level, regarding the public sector's role in social provisions like open space. The third factor has been the changing assessments of multiple use concepts, which provide new ways of solving difficult planning problems but have also led to some disenchantment in practice.

Government advisors (Prior, int. 1986; Young, int., 1985) and local authority officials (Crofts, int., 1985; Fraser, int., 1985 and Langmuir, int., 1985) stress the variability of provision between the local authorities. The following factors were identified by advisors as those most directly influencing provision: 1) whether authorities were obliged by statute to provide facilities or not; 2) if they were not obligatory then the priority given them by the council, the enthusiasms of individuals in the department for designations, and whether national funding or grant-aiding was available or not; and 3) the relative impact to informal access.

Regarding the factor of priority in council mandates, representatives in the Convention of Scottish Local Authorities (hereafter COSLA) remarked that the only way some authorities could

keep track of changing legislation that affected local authority duties was to wait until public complaints raised their awareness. In this sense remedial provision has been unimaginative and reliant upon a watch-dog public.

These dichotomies have made the relationship of the mediators with the seekers and controllers vary between *laissez faire* to highly interactive which has led to the outcomes discussed below in Section 6.2.2. These attitudes have been tempered by other indirect pressures from other governmental bodies.

6.2.1.5 Other governmental attitudes

The Scottish Sports Council (SSC) a 'quango' (quasi-autonomous non-governmental organisation) and the Scottish Development Department (SDD) a central government body, have brought indirect pressure to bear on the provision of public opportunities. The SSC influence provision in that they tend towards supporting organised sport facilities and nationalised standards (Davies, brief, 1985) of facilities so that informal pursuits are ignored and they have no financial contribution to subsidising or providing public access corridors.

The SDD have had several roles to play in formal provision. First, they are the central government agency responsible for the allocation of money to the CCS. As a result they have been watch-dogs on the countryside statutory powers and report back to political policy and law makers. Their findings have suggested that multiple use planning designations are unwieldy (Anderson, int., 1985), that saturation in budget expenditures should be reached by the 1990s on access and management agreements and that

there is no chance for legislative reform to influence the status quo of countryside ownership because of implacable opposition by landowners.

The SDD has been responsible for the renewal schemes of derelict land in the central belt of Scotland between the Glasgow conurbation and Edinburgh. Of the 2,816 land renewal schemes completed, thirty-four percent of this land has been put back into formal recreation land, though the trend is now to put it back into a higher percentage of industrial use.

The Scottish Tourist Board (STB) have changed their emphasis (Adams, int., 1985) away from funding primarily accommodation within the tourist sphere to funding formalised recreational and tourist attractions within the countryside. This policy decision has been made to increase the range of commercial provision for tourists and maximise profits (CCS, 1987c). Managers within the STB stated that there was no attempt to market free access to the countryside in Scotland as part of Scotland's package (Adams, int., 1985).

The following sections now look at the formal provision of access that have been created through the interaction of new legislation, managerial attitudes and public attitudes.

6.2.2 Designations

6.2.2.1 Country parks

Acquisition of land for country parks has not met a great deal of opposition from landowners because of the small scale and the vision of them as single use pleasure grounds (CCS, 1974; 1986d). Ownership typically has been negotiated with all rights

transferring to the managing body, and the historical precedent of open estates, e.g., Pollock Park, Culzean Castle, together with the financial grant-in-aid of the CCS for purchase and a ranger service, has led 25 district and regional councils in primarily the central lowland belt to establish these recreational parks.

The respondents to the survey were unanimous in interpreting their rights of access to these pleasure grounds. In general access to these parks is free, except in the case of Craigton and Culzean (also under the management authority of the National Trust for Scotland) where there are charges for parking, and certain facilities. Access is perceived as "a social investment for society" (Prior, int., 1986) and as such a perception of a right of access inherent in the designation is promoted. Planners within the SDD noted that the acquistion of these parks creates the demand for them, thus reinforcing park creation with creation of access. It was recognised that "a new generation will grow up thinking that regional/country parks are the norm" (Anderson, int. 1985).

6.2.2.2 Regional parks

Public perceptions of regional parks were similar to those of country parks, however the designation of regional parks carries with it no such assumption of pleasure grounds. The use of the word "park" in conveying the assumption of free access explains the interpretation. The semantics of the term has created the largest objections from landowning interests and managers alike.

> "to the general public the term 'park' implies an area over which they can wander at will, which is certainly not the case with regional or special parks." (COSLA, mimeograph, 1978b)

The designation was conceived of as a multiple use management tool in large areas of varying land uses with recreational pressures, to release the load off private land occupiers and local authorities in supporting informal public use. It provided a legal means to implement a ranger service through informal or formal management agreements and access agreements (CCS, 1986e).

To date only three regional parks plans have been initiated, two of the parks having been established, one in the Lomond Hills of Fife and the other in the Pentland Hills on the outskirts of Edinburgh. Although the Pentland Hills were identified as the first candidate for this designation, it has been the most problematic plan to implement. A case study was made of the Pentland Hills Regional Parks public inquiry, a summary of which is presented here.

Pentland Hills Regional Park Case Study

> "For generations the Pentland Hills have meant the Hills of Home to the citizens of Edinburgh. They are also a place of work for farmers, shepherds, foresters and quarrymen and provide outdoor recreation of many different kinds. These several uses of the Pentland Hills have been delicately balanced. In an age of rapid change how can we maintain this balance?" (Lothian Regional Council, 1984)

The Pentland Hills lie on the southern boundary of Edinburgh and provide a visible and physically accessible walking area for the urban population. The hills contain upland sheep farms and reservoirs with other uses on the lower slopes including: arable farming, agricultural experimental farming, a Ministry of Defence dry training and firing range, ancient monuments, country parks, forestry, and quarrying. The core area of the Pentland Hills covers approximately 9000 hectares.

When the Countryside (Scotland) Act of 1967 came out, Lothian Regional Council recognised that the new powers to provide for recreation and amenity might have some relevance for the Pentland Hills which were beginning to feel the pressures of use from recreationists. In 1970, a Pentlands Technical Working Group was set up to look at the feasability of using access and management agreements as a means to manage the multiple use of the core land area of the Pentland Hills. The Working Group conducted surveys of the natural resources of the area, and entered into consultation with landowners and managers. They produced a structure plan which recognised a 'regional park' status as the basis for management.

By 1975, a Joint Advisory Committee had been set up to consider the strategy of development. With the arrival of the Wildlife and Countryside (Scotland) Act in 1981, the appropriate powers were available to designate the area as a regional park. Information was collected on integrating management plans for the reservoirs, trust properties and military areas. Two small country park designations were implemented at the high pressure areas of Hillend in 1982 and Bonaly in 1984. Rural Land Management Group meetings, during 1983 and 1984, were held to find out the views of local farming and landowning interests. The outcome of the meetings was to put through the Pentland Hills Regional Park designation order in late 1984. So many public objections were lodged with the Secretary of State that a public inquiry was held to investigate the designation.

The public inquiry was held between May 20 and 30 in Edinburgh. Over 20 representatives were heard including the Lothian Regional Council (Table 6.1). Of all the representatives,

other than the Regional Council, there was only one with unqualified support of the plan as proposed, the Countryside Commission for Scotland.

Table 6.1 Groups represented in the Pentland Hills Regional Park public inquiry

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Lothian Regional Council representatives

Lothian Regional Council Executive Director (Bowie, G., precognitions (hereafter precog.), 1985)
Lothian Regional Council Department of Planning (Langmuir, E., Sheldon, Dr., precog., 1985)
Lothian Planning and Development Committee (Alexander, D. Councillor, precog. 1985)

Representatives of groups

Scottish Wildland Group (Smith, T., precog., 1985)
Edinburgh Centre for Rural Economy (Wilson, Dr., precog. 1985)
Scottish Wildlife Trust (Knowles, B. precog., 1985)
Royal Society for the Protection of Birds (Knowles, B. precog. 1985)
Ministry of Defence (Hope-Thomson, T.J. Major. precog., 1985)
National Trust for Scotland (Crofts, T.A. precog., 1985)
Nature Conservancy Council (Easton, C. precog., 1985)
Scottish Landowners Federation (Cairns, W.J. precog., 1985)
National Farmers Union (Goodfellow, J. precog., 1985 and Cairns, W.J. precog., 1985)
Countryside Commission for Scotland (Turner, R. precog., 1985)
Colinton Amenity Association (Harris, H. precog., 1985)
Ramblers Association (Scotland) (Grosz, D. precog., 1985)
Rosebury Estates (Findlay, N. precog., 1985)
Swanson Estates (McClung, G. precog., 1985)
Regional Councillor for Queensferry (Conservative) (Cowan, C.D.J. precog., 1985)
Regional Councillor for Balerno/Baberton (Conservative)(Fraser, H. precog., 1985)
Lothian Ratepayers Action Group (Adlington, R. precog., 1985)

The majority of the views were representing landowning or controlling interests in the immediate vicinity. There was a small

section representing conservation objectives and the Ramblers was the sole group representing recreational users. There were several individual objectors representing individual views from farming backgrounds and users.

Much of the debate from both sides concerned an interpretation of the concept of the regional park designation. In their defence, the Regional Council interpreted the concept as one which provided a framework in which to solve problems and make plans for recreational provision and conservational objectives. The statutory obligations of the Act gave Council a full range of countryside functions from providing stiles and signs, to functions of enhancing beauty, providing rangers and access agreements, which could take in interpretive and educational functions. If there was no designation, powers were not available in an integrated and wide-ranging sense except under the piece-meal application of powers within the country parks.

A critical function that the Council perceived was the function of rangers being able to be outside of country parks and assist landowning interests in the surveillance, maintenance of land outside country parks or rights of way. Council maintained as a defence that if it had only management agreements available as statutory powers they would have had to enter into 50 different agreements that would have been slow and costly to implement. The regional parks were conceived as a co-ordinated and streamlined means of integrating uses. The designation was perceived as a first step upon which detailed plans for the implementation of these various functions would follow, including some concrete plans of how arable and hill farmers were to be included in the planning

process and be compensated for losses through public use.

The Council identified that most of the objections to the park stemmed from misunderstanding of the designation. The Executive Director stated that the most significant point to emerge from the rural land management group meetings, which had been held to listen to opinions of local interests, were the implications of the word "park" (Bowie, precog, 1985).

Subsequent testimonies from witnesses confirmed these points. Twelve of the witnesses, mostly landowners, felt that the designation of the Pentland Hills as a "park", regional, special or otherwise, meant use as a park to the public and therefore, an assumption of a pleasure ground with increased public access and its related problems. Related to this fear was the assumption that the public were not informed or willing to understand the nature of complicated designations.

In rebuttal, the representative for the CCS stated that: "the public are well aware that designation does not give rights over land." (Turner, R. brief, 1985). This point was debated by subsequent witnesses who verified that any designation of park did create such an assumption, citing cases were this had already happened.

> "I have already been stopped on the Glen road in my car and informed that this was a public park and [that] I had no right to be going up the glen." (Graham, L. letter, 1985)
> Mrs. Graham is an owner of a farm to which the private road is maintained as a pedestrian footpath only except to the residents.

The second major objection to the designation was fear of loss of control of land if landowners had proprietorial rights constrained under designations. Landowners were being asked to

enter into a planning process that worked towards the integration of various land uses, including public recreation. Land controlling attitudes were typified in the statement of Mr. Findlay, factor to the Rosebury Estate, who claimed that in practice the carrying out of secondary interests was never successful in terms of maintaining primary interests and that it was economically unviable.

Because the regional park concept was presented more as a working framework not a definitive plan of action, detailing works and financing, there were strong objections on the grounds that there was too much uncertainty about the practical workings of the designation. There was a feeling that there was a lack of sensitivity to the delicate balance of the rural economy where even slight changes to the status quo could ruin a hill farmer's livelihood. Tied up in these attitudes were strong emotional feelings towards the traditional character of the Hills. These attitudes are summed up in the comments made by Councillor Cowan.

> "I want you all to know that I have no financial interest in any way [in the Hills]. In fact my only connection is a life long friend of all, the shepherd at Habbie's Howe at the southwest end of Loganlea Reservoir...I want VISION and FORESIGHT to be uppermost in ALL our minds...the more HUMANS the more DAMAGE." (Cowan, precog., 1985)

The few recreational interests represented, directly (Ramblers) and indirectly (Scottish Wildlands Group) identified the other fears of upsetting the balance of *de facto* provision. The Ramblers' views were against the over-formalisation of walking in the hills. They were afraid of the proliferation of signs, stiles, footpaths and other facilities and felt that there would be a retaliation of restrictive signs by landowners.

> "If signs are erected telling people where they can go then signs should be erected telling people where they cannot go." (Smith, T. precog., 1985)

Criticisms from local landowners and representatives of local communities towards the regional park included claims that the designation had had no public demand for it. A partisan division between Conservative constitutency views in the rural area and Labour constitutency views from the city was evident over this issue.

The common theme throughout the inquiry was the fear of a loss of the traditional balance of tolerance and respect between controllers and seekers, if the designation was to go through. Most of the objections were from the landowning interests, there being a low representation of the general public, for the potential loss of flexibility regarding working relations between the seeking and controlling interests.

On the basis of the results of the questionnaire survey of this research, it was evident that the majority of people surveyed did assume rights of access to regional parks and that there was a case for this question of public interpretation of access to formally designated "parks" to be clarified and verified. Since this was one of the main factors influencing objections to the designation, this served to highlight the need for designations to be considered in light of interpretations of public access. If parks carry with them an assumption of free access then this should be considered critically in light of designation.

The other major point to come out of the inquiry was the nature of interpretation of divisions of proprietorial rights into different bundles. Managerial rights, proprietorial restrictions

from preventing trespass, and rights of way over land are all distinctive legal provisions for the control of public access, but can be interpreted as one and the same thing. The implications for not distinguishing between these designations can be, as the inquiry has shown, a serious block for resolving intensive and integrated land use issues.

Finally, the case illustrated the range of critical issues that evolve with a consideration of formalising recreational access; from practical issues of the basic compatability of different land uses with recreation, economic issues of subsidy and management, political issues of public versus private provision and the value placed on access and recreation by society, and the different attitudes towards maintaining relationships between landowners, users and the land itself.

In summary, the inquiry was a comprehensive exercise in revealing the varying perceptions and semantic interpretations of access and parks. The issues debated revealed the troubled relationship recreation has with a range of land uses both as an adjacent land use and a secondary land use.

The other regional park designated in 1986, Fife Regional Park, did not receive half of the complaints and concerns that the Pentlands case did. Local authority managers identify several reasons why they thought the process was facilitated in Fife: first, was the role of an on-the-ground negotiation process in the Fife case, second was the smaller number of affected landowners within the designation, third, was the greater distance away from a large population centre, and fourth, was the different categories of emotional feeling about the place (Sankey, pers com, 1987).

These kinds of factors and perceptions have again come to light with the consideration of the final category of special parks.

6.2.2.3 Special parks

The final category to come under the park system is special parks, though no statutory basis exits as yet for their creation. Special parks were envisaged as having the same features as a regional park but would have a more significant role to play nationally and would be eligible for a higher rate of grant. They would still be managed by the region and local authorities, but with management committees and advisory members appointed by the Secretary of State.

Areas for special parks were orginally identifed as the Cairngorms, Glen Nevis/Glen Coe and Loch Lomond Trossachs. In the planning stages of special parks there have also been misinterpretions of these vague planning designation, that have not had the ease of uptake originally imagined. The first area earmarked for special park status was Loch Lomond/Trossachs. In the Loch Lomond Local Subject Plan, five policy areas were envisioned from tourism development areas to wilderness areas with different access policies to each (Loch Lomond Planning Group, 1980 p.8).

The response to this plan has been fraught with conflict from landowners and occupiers fearing public control over their land and public misinterpretations of the different designations (Roe, 1985).

> "One (issue) which was raised was the semantic issue of what you call the areas in the plan called 'wilderness

areas'....What was embraced by the debate was the whole concept of 'wilderness' and the access of people to it." (Roe, 1985, p.8)

These semantic problems with interpreting access into designations appears again in the following designations.

6.2.2.4 Other designations and long-distance footpaths

Local authorities were given the enabling power to negotiate access agreements with landowners when authorities felt that pressures from the public on private land necessitated government help in the form of maintenance and a ranger service. Access agreements have not been used to any great extent in Scotland within or outwith parks - there have been under 40 since 1968 negotiated. No compulsory orders of access have been issued. Authorities have neither seen the need or had the inclination to go through with negotiations for various reasons, e.g., fear of disturbing the status quo of *de facto* access or starting a precedent.

Most of the agreements have been made over the long-distance footpaths which were negotiated in conjunction with the CCS itself. Outwith long-distance footpaths, Stirling District Council have been one of the few promoters of access agreements because of a district planner highly motivated in that direction (Dobson, 1980).

Long-distance footpaths were another designation that found disfavour with public lobby groups, led by public spokespeople (Brown, 1975; McOwan, 1983; Smith, 1985). Three to date have been implemented: the West Highland Way, the Southern Upland Way and the Speyside Way. Proposals for the Grampian Way which passed through the mountainous terrain of the Cairngorms were criticised

on the grounds that: 1) the route already existed as a right of way, 2) the need for signposting was debatable, 3) over use from publicity could damage the conservational values, 4) signposting would remove the challenge of the walk, 5) it was seen as development for the sake of development, 6) there were danger elements of encouraging inexperienced walkers onto remote hilltops, 7) the 'domino effect' to *de facto* access was possible. (Brown, 1975).

Central to the assertions of this lobby were that the opportunity was already there for the taking, and that a tolerance existed. The introduction of a facility like a long-distance footpath would increase use and all the problems ensuing from concentrated linear access. This argument stems from the perceived need to protect resources that are unique and fragile by not advertising (Waller, 1982). The public's lack of awareness of *de facto* access is perceived as the barrier to the potential flood. The Grampian Way was eventually shortened to the Speyside Way in 1983 avoiding the portion running through high hill land. It remains to be seen whether the arguments against formalisation are realised in terms of the change to *de facto* freedoms, but the power of their argument has shifted policy away from these national 'walking highways' to smaller developments in footpath networks. Long-distance routes have received considerable attention in the CCS's access strategy (CCS, 1986c), however, these facilities have not made any more land accessibile than was already available through traditional rights of way or *de facto* areas. Their chief function has been to package parts of the existing resource, and focus use on these managed routes. With policies now changing to

smaller networks of footpaths, much the same process is happening.

6.2.2.5 Rights of way and footpaths

The implementation of new rights of way by local authorities has been virtually non-existent. Some local authorities have tackled some of these problems, e.g., Glasgow District Council, Strathclyde Region negotiated walkways as a result of the large infusion of capital through the Parkland Improvement Budget in the 1970s (Fraser, int., 1985; Logan, 1971), these were improvements of existing rights of way as well as purchases of vital links. Most authorities have neither the budgets nor the inclinations to implement new rights of way and simply work with the exisiting resource of rights of way created in the past by prescription.

The tradition of rejecting the English example of formalisation has influenced the authorities against registration; the argument being that survey and registration would put an inflexible status upon the designation and effect a perceptual change to landowners for *de facto* access as well as being costly and time consuming. The lobby against registration was strengthened by the SROWS and a series of working parties with the CCS and local authorities. The first working party was set up in 1977 with a questionnaire sent round to examine local authority attitudes and involvement with rights of way and footpath registration and implementation with respect to the 1967 Countryside (Scotland) Act. This questionnaire was followed up by a similar one in 1984. The results of the two questionnaires are summarised here in a small in-depth case study.

Results of questionnaires to Scottish local authorities on footpaths and rights of way

In 1977, the Convention of Scottish Local Authorities (COSLA) and the CCS set up a working party with the remit of "examining the subject of footpaths and walks for recreation" (COSLA, mimeograph, 1978a, p.4). The first questionnaire was sent round to all planning authorities in Scotland (both regional and district councils) later that year. Six outside organisations were also invited to give oral evidence to the Working Party: SROWS, Scottish Countryside Activities Council, Scottish Landowners' Federation, National Farmers Union of Scotland, Forestry Commission and Scottish Woodland Owners Association. The British Horse Society submitted a written comment. Replies are annotated in the mimeograph mentioned above (1978) and will be compared to the results of the 1984 questionnaire below.

The 1984 questionnaire circular was sent around to the same planning authorities and the replies collected by COSLA (COSLA, mimeograph, 1984). The results had not been summarised by COSLA when this research was undertaken, so the following discussion represents a summary of the questions. Table 6.2 lists the planning authorities' response to both circulars.

Table 6.2 Response to questionnaire sent out by COSLA to planning authorities on footpaths and rights of ways[1]

YEAR	1977	1984
BORDERS	*	*
CENTRAL	-	-
Clackmannan	*	*
Falkirk	*	*
Stirling	*	*
DUMFRIES AND GALLOWAY	*	*
FIFE	*	-
Dunfermline	*	*
N.E. Fife	-	-
Kirkcaldy	*	*
GRAMPIAN	*	*
Aberdeen	-	-
Banff and Buchan	*	*
Gordon	-	*
Kincardine and Deeside	*	-
Moray	-	-
HIGHLAND	*	-
LOTHIAN	*	-
East Lothian	*	*
Edinburgh	*	-
Midlothian	*	*
West Lothian	*	*
STRATHCLYDE	*	-
Argyl and Bute	*	*
Bearsden and Milngavie	-	*
Clydebank	-	*
Cumbernauld and Kilsyth	*	*
Cunnock and Doon	*	*
Cunninghame and Dunbarton	-	*
East Kilbride	*	*
Eastwood	-	*
Glasgow	-	-
Hamilton	*	*
Inverclyde	*	*
Kilmarnock and Loudoun	*	*
Kyle and Carrick	*	*
Renfrew	*	*
Strathkelvin	*	*
TAYSIDE	*	-
Dundee	*	*
Perth and Kinross	*	*
ISLANDS		
Orkney	*	*
Shetland	-	-
Western Isles	-	-

* Signifies a response to the questionnaire

[1] Note: district councils in single-tier planning regions were not approached.

Question 1: What work is currrently being undertaken in your authority to record footpaths?

Generally there had been attempts made by most of the districts and a few of the regional councils to record footpaths on planning maps and indexes. Regional councils that responded in the earlier circular placed the responsibility on the district councils to record, assert and publicise. A submission from the Highland Region, who are the single planning authority for the region, was stopped because of community and district council reactions against the indexing backed by vocal landowning interests. Amongst the district councils that responded to both, there was a great range of activity from none to extensive. In the 1984 circular there were no questionnaires turned in from Glasgow, Edinburgh and Aberdeen District Councils and, generally, city authorities were less active than rural ones.

For recording the footpaths and rights of way, councils used local knowledge, community council records, the countryside ranger service, Manpower Services Commission (hereafter MSC) teams and SROWS records and knowledge. Records included *de facto* and *de jure* footpaths and access agreements.

Question 2: What steps were being taken by your authority to make knowledge resulting from recording footpaths known to the public?

Typically, the only way the public could gain information of footpaths was by requesting maps or indexes from the appropriate department in the local authorities. There was little difference over the years in the degree to which they publicised footpaths, with a range of response from no publicity to some authorities

having prepared leaflets, e.g., Borders Region and East Kilbride District, which could be picked up in the council offices. There is no advertisement made of footpaths outside of the council offices and the only way the public can find out about these footpaths is to have the initiative to go into the offices. Authorities were not inclined to advertise any footpaths because of the danger of upsetting adjacent landowners by increasing use and the costs of advertising these facilities.

Question 3: What steps are being taken to signpost rights of way?

Though there is a general policy amongst authorities to signpost rights of way with the help of funding from the CCS, labour from the MSC and expertise of the SROWS, major deterrents have prevented the implementation of this policy. Most of the deterrents stem from the indeterminate status of the rights of way, lack of funding, lack of manpower and lack of will to do it. There are active councils and their common factor is the enthusiasm stemming from individual planners or strong support from community councils. In the Highlands, the initiative stems from the Edinburgh-based SRWS not the councils who are against registration.

Question 4: In the process of recording footpaths have any particular problems arisen to which your authority would wish to draw the attention of the working party?

Both circulars identified the following problems: 1) the difficulty of complying with common law criteria and right of way; determining status; lack of protection; lack of information about whose responsibility the more remote footpaths are; 2) the

time consuming nature of recording, determining status, surveying, administrating; 3) resistance of landowners due to misunderstanding of rights of way, problems with paths in multiple ownership; 4) unclear mandate of Section 46(1) of Countryside Act as discretionary power not mandatory.

Question 5: To what extent have community councils and/or voluntary organisations been active in provision of information on paths?

Again, authorities replied that it was a matter of individual enthusiasms of local groups and community councils. Some found their help invaluable while others knew very little and were part of lobbies against district assertions. Other voluntary groups as well as ones mentioned previously were the Ramblers, the NE Mountain Trust and historical societies.

Question 6: Has your authority experience in asserting, protecting and maintaining rights of way as set out in Section 45 of the Countryside (Scotland) Act 1967?

There were some assertions of right of way by councils but they were usually informal not through legislation. The emphasis has been on negotiation and persuasion on small scale works with policies to clear obstructions and erect stiles, not to involve themselves with any court proceedings with all the inherent costs.

The following questions related only to the 1984 circular:

Question 7: To what extent has your authority's intentions relating to recording, protecting and asserting public rights of way (identified in your response to the questionnaire in 1977) been implemented?

Most of the councils replied that their intentions had been

hampered by several administrative problems, for instance, reorganisation of internal departments, changes in staff, changes in priorities, reductions of resources and changes in MSC schemes. Highland Region had to restrict their activities because of public reaction against registration.

Question 8: Does your authority have a specific budget for work in identifying, recording maintaining and publicising footpaths?

In almost all cases authorities replied that there was not. This type of work tended to fall under a variety of budgets, from Countryside Planning Officer to Parks and Cemeteries. Leaflets might be financed through Technical Services and maintenance under Road Works. Generally, financing was ad hoc.

Questions 9, and 10 concerned the implementation of various sections under the Countryside Act (1967) and Job Creation Schemes.

Footpath agreements under Section 30 and 31 were taken up in only 5 local authorities for one ar two situations. Some implemented linear access agreements under Section 13 and a few diverted paths under Section 35. MSC teams had been extensively used for all aspects of footpath work. The Countryside Ranger Service under the 1981 Act was used by most of the regional councils and more than half of the district councils for some aspect of footpath maintenance, surveillance, or problem solving.

Recommendations of the working party have been to maintain the existing status quo whereby rights of way are not legally obliged to be registered due to both arguments of cost and the flexibility of the existing method to user and owner. Ranger services had been extended after 1981 to rights of way to overcome maintenance

problems, and a focus had been put on developing local networks of footpaths instead of focusing on more tourist-oriented paths.

In summary, the present legal status of footpaths and rights of way in Scotland is perceived by general policy makers as providing a flexibility for users and landowners alike. The flexibility however can be a double-edged sword because of the difficulty in determining routes, maintaining them and providing an administrative structure for them. Without this type of infrastructure, the initiative for finding and keeping them in perpetuity lies in the public's hands, yet knowledge about footpaths is not easily found and relies on a great deal of initiative from certain individuals and charitable trusts. There has been a very low input from the public in general on debating and being involved with the issue. Instead, the relationship that has evolved is between select dedicated representatives of users, the local authorities and vocal landowning interests. The status quo has been one of flexibility towards primarily landowning interests and then recreational use. The focus of debate has centred on where responsibilities lie, with all parties acting in a sense as opportunists in their best interest. Local authorities would happily release this discretionary obligation if they felt no demand from local groups or individuals. Local groups act as watch-dogs on landowner's actions to ensure footpaths are not closed. In the lowlands, farming interests are either in favour of registration which clearly places the onus of maintenance in the local authority's lap or are against registration if they perceive that registration prevents any changes to the line of the route or that demand will be created.

The further argument against registration by user group representatives is again the intellectual argument that if *de jure* access is too rigidly established then *de facto* access privileges will be withdrawn (COSLA, mimeograph, 1978a). Despite, recent policy changes to switch national funding from the long-distance footpaths to a national network of local rights of way and footpaths, problems remain with the expensive task of retaining the relationship with a myriad of owners and land uses.

Permissive footpaths that have not normally been considered with respect to management agreements are the target for some of these new initiatives. Permissive footpaths in the hills have been investigated under a three year reconnaissance project by the CCS on the condition of mountain footpaths and maintenance strategies. The outcome of the project was the identification of severe erosional problems from overuse of many historical hill paths (Aitken, 1985b). The issue of locus of responsibility for payment and initation again is seen as one of the biggest constraints on improvement.

6.2.2.6 Pavements

The remaining white areas include pavements and coastal foreshore which are managed (in part, in the case of foreshore) by local authorities for access but not necessarily for recreation.

Pavements are a vast resource for recreational use throughout the urban centres of Scotland. Because they are typically located adjacent to roads and commercial or residential properties, they are not located for amenity and have become corridors for urban outdoor recreation. Pavements have a considerable

flexibility of use and they are already built into maintenance and construction schedules of highway authorities which gives them a more lasting status.

There are no statistics of use for recreational activities in Scotland but they are probably the most heavily and widely used corridors for informal recreation. They are well channelled corridors that are often lit at night, and have a degree of safety because of the visibility of these corridors from shop residential premises and vehicle traffic. As a result they are safer than urban footpaths that do not run adjacent to traffic or shops.

The relationship of seekers and mediators is regulated by the standards and the expectations of these standards. Standards within highway bye-laws and planning regulations require pavements to be constructed to certain widths, etc. and the use must conform to pedestrian traffic. Traffic research and safety standards though are primarily oriented to the car and British lobby groups have emerged for protection of pedestrian rights on pavements.

The rules of use, as perceived by the survey sample, are very clear and seekers expect these standards to be maintained. Conflict occassionally occurs between individual users wanting to use these corridors for bicycles, skateboards, and other wheeled vehicles. However, recently there has been an organised lobby aimed at local authorities to draw attention to the deterioration of this resource in the fabric and maintenance, and the dangers this poses to users (National Consumer Council, 1987).

A British appeal through Friends of the Earth was held to raise awareness of the deteriorating condition of pavements throughout Britain. These kinds of public lobbies have developed

from imaginative planning ideas in continental cities and are beginning to be recognised by local authority planners (Fraser, int., 1985). Implementation has been very limited though due to the lack of priority recreation has within urban needs.

6.2.2.7 Foreshore and navigable waters

The public believe that they have rights to foreshore but there has been a troubled relationship between the public and controlling interests in the coastal resource. No central body or legislation blankets foreshore responsibilities or policy, though the Scottish Development Department developed Coastal Planning Guidelines in 1974, in response to the threat of North Sea oil and gas use (SDD, 1974). They imposed zones where oil and gas related developments would be inappropriate and recommended planning authorities prepare conservation policies together with plans for recreation.

During this time the CCS were commissioning an extensive study on the beaches of Scotland to prepare inventories on physical attributes, ownership and access (Ritchie and Mather, 1984). A further study was carried out to provide a framework for management for freshwater bodies amongst the scattered authorities whose jurisdiction these water resources fall into (Tivy, 1980).

With one half of the coastline in private ownership, one quarter in in local authority and the remaining in common grazing, a variety of tenures exist on this resource. Use is concentrated onto the sandy, low beaches, which makes up about 8% of the total coastline, marinas, clifftop paths and promenades (Ritchie and Mather, 1984). Use is concentrated in the central lowlands which

have relatively few sand beaches. Though *de facto* access exists to much of the coastline, restrictions have evolved through various mechanisms: 1) commercial tenting/caravan sites have prevented other public use because the public are not able to gain access to the foreshore because of blocked access by the campsites; 2) large consolidated private estates set up a perceptual boundary between roads and the coastline; 3) fencing improvments within common grazing form boundaries between roads and the beach; and 4) fragmentation of ownership through second home development.

At the same time, access to the coastline and along the foreshore is being formalised through local authority provision of coastal country parks, e.g., Balmedie (Grampian Regional Council), John Muir (East Lothian District Council) and through the Forestry Commission, e.g., Tentsmuir in Fife, and the National Trust for Scotland (NTS), e.g., Inverewe Gardens on recommendation, and grant-aiding from the CCS.

Other local authority provision has come in the traditional form of ports, municipal seaside parks and promenades, e.g., Ayr and Aberdeen. Again, these facilities have not created accessible areas but are simply packaged accessible foreshore in the form of parks.

Pressures from seekers develop from two sources: first, is the perceived needs of conservation groups to preserve amenity and thus lobby for public acquisition or control. Second, pressures arise with increased use.

6.2.3 Summary of accessibility to white areas

In the process of formalising opportunities into "white

areas", mediating bodies are faced by these interrelated problems: 1) the fiscal problem of formalising recreation, i.e., money to create and money to manage, created by historical attitudes that do not place a high value on recreational land use; 2) the reduction of accessibility if access becomes perceived as a commodity that requires subsidy from the State in a direct or indirect form, this would stem from two trends: a) the reluctance of landowners to retain a tolerance of *de facto* access and b) the creation of a reliance of the public on public provision, in other words creating expectations which they cannot hope to meet; 3) the tenuousness of outdoor recreation priorities within over loaded remits of authorities; and 4) the disappearance of informal recreational opportunities especially within the urban landscape.

The outcome in Scotland to date has been a low use of statutory powers and where powers are used, a reliance on packaging existing accessible land under formal designations. The creation of country parks, which follows a process well understood traditionally, has only increased opportunities marginally within the populated central belt, especially in view of the fact that some of these properties were already existing grounds available for access prior to their designation (Culzean, Balloch).

The integration of access through historic mechanisms of alienating certain rights or placing constraints on proprietorial rights has been problematic. These mechanisms have been influenced by public perceptions of rights of access inherent in concepts like 'parks' and 'footpaths' and other local government facilities. As a result there has been a reluctance to implement statutory powers. How much this has evolved from 1) the pervasive arguments of the

controlling interests, 2) the arguments of minority user groups, 3) the lack of involvement by overstretched local authorities or 4) the level of demand, is worthy of further research.

Landowning attitudes reveal that pressures from seekers have not fulfilled their earlier expectations (Hughes-Hallet, int., 1985) and the predicted strong pressures of controllers on the mediating bodies has not been made. Instead emphasis has been placed on maintaining flexibility for controlling interests. Again how much is this a function of wanting to avoid public control of private land and how much a manipulation of the *de facto* domino argument is difficult to determine.

Many of the statuory powers have been used simply because they exist and were developed from the English experience, as the criticisms of the long-distance footpaths testifies (Henshaw, 1984). The single greatest threat to the *status quo* appears to be drastic changes in land use which leads the vocal sector of the seekers to arguments for public control of land and the movement of grey into white. To date, very little is actually within this white category, the bulk of all land and fresh water bodies lies in the grey areas of open countryside, forestry land, trust lands, and within cities in commercial private interests where the relationship between seekers and controllers is becoming more and more involved with land use changes. The dynamic shifts within this area serve to challenge the status quo of public provision.

6.3 Grey areas of accessibility

6.3.1 Introduction to grey areas

Grey areas represent areas where rules regarding access are less clear. Lands that were perceived in the survey under the category of grey areas include the following: (in order of the percentage of increasing perception of a lack of rights, as in Table 5.12) open countryside, rural roads, loch shore, trust properties, Forestry Commission land, roads, drove roads, nature reserves, abandoned railways, open countryside with livestock or game, and private forestry land.

These lands are primarily used for land uses other than recreation and have a varied status in terms of ownership, management and designation. The relationship between seeking interests and controlling interests in these lands tends to be more direct with a varied involvement of the State as mediator.

The important factors about these relationships are: 1) the ambiguities of perceptions and attitudes of the users and pressure groups; 2) the changing uses of the land and attitudes of the land controllers; and 3) the role of the mediators in supporting the relationship. Grey areas can be split into those areas under private management and those under public management (Table A2.2 and A2.7 in Appendix 2 contain the relative areas of land under these different tenures). Different issues and management practices have evolved within these two categories so they are discussed separately.

6.3.2 Private management

The grey areas to open countryside, loch shores, trust properties, drove roads and enclosed or unenclosed farmland with livestock have one main factor in common, the control of the land by private management. The following discussion examines the factors influencing the accessibility to these lands.

6.3.2.1 Changes in legislation and policy

Legally, nothing has changed in Scotland regarding the interpretation of trespass to private land at common law, with the implications that mutual tolerance has continued. The only statutory amendment has been regarding trespass with intention to commit a theft, handled under the 1982 Civic Government Act. The fact that the law has not been tightened more in this regard points out the lack of lobbying pressure from controlling interests to change the present flexibility of the law.

Government officials drew attention to this fact by the evidence of a consultation paper (Scottish Home and Health Department, 1983) that was circulated through central government on trespass (Prior, int., 1986; Lonie, int., 1985). The paper concerned the proposal for a change in statute law to bring more legal protection against trespass on residential premises, following a review in England and Wales. The review was initiated by the concern following the intrusion of a man into the Queen's bedroom, and considered the need for new legal sanctions against simple trespass in residential areas.

The general consensus by all Scottish government agencies concerned was that it would be impossible to define strictly the

boundaries of residential premises. With any vagueness in definition, one of the possible implications could be that private landowners of large estates would withdraw their tolerance since simple trepass could be regarded as a criminal offence and *de facto* access could be lost in some instances (Hughes-Hallet, int., 1985; Arbuthnott, int., 1985).

The historical basis of tolerance has continued to exist in the law, though in actual practice tolerance operates only in the following circumstances: 1) where the pressures are not so great to cause damage to the resource or the livelihood of the occupiers; 2) where there are recreational values inherent in the land; 3) where the land use of the occupiers is compatible with recreation; and 4) where there are no real physical or perceptual restrictions, dense planting, fencing, residences, threatening livestock, signs of occupation. Aitken notes that tolerance is best practised by those who have had a traditional *de facto* use over many years and have built special management into their general management framework (Aitken, 1985a). The fact that tolerance continues to exist between users and landowners explains why clear rules of access to privately managed lands were perceived by the survey respondents.

The historical discussion brought out the importance of continuity of land use for the exisiting system to work. At present, land use changes within the agricultural or forestry sector do not come under planning regulations (except in some instances within NSAs and ESAs). Consultation procedures by the Forestry Commission with local authorities on Forestry Grant Schemes (FGS) have had some role in maintaining access on traditional routes, but there has been little opportunity for

seeking interests to voice suggestions. There have been rumblings in planning legislation to try and safeguard amenity values and/or access by taking over more land use decisions under planning control (Anderson, int. 1985; Arbuthnott, int. 1985), though to date ESA designations in Breadalbane and Loch Lomond have been the only statutory controls on certain farming practices that have been implemented (Article 19 of Council Regulation (EEC) No. 797/85, 12 March, 1985).

The only other legal adaptations influencing the relationship are those developing through planning controls on Sites of Special Scientific Interest (SSSI), administered by the Nature Conservancy Council (NCC) through the Wildlife and Countryside (Scotland) Act 1981 (hereafter the 1981 Act). SSSI designations place conditions on the management and use of sites outside National Nature Reserves (NNRs) as a means of integrating conservation across the wider landscape. Though SSSIs are unmarked and NCC have no obligation to provide public access to these sites, part of the conditions placed on these sites could be restriction of access to the public.

Generally, there are few legislative tools for the control or provision of access unless it is to move land or managerial rights out of the private sector into the public as discussed in the first section (6.2). For the bulk of privately owned/managed land there are very few statutory powers available to preserve amenity or access.

6.3.2.2 Public attitudes and perceptions

The results of the questionnaire suggested that the large majority of individuals perceive they have rights to open

countryside but are aware of the obligations placed on them, e.g., comments suggested that "as long as you do not cause damage" or "...light fires", "abuse liberty" and that rights were dependent on "proximity to houses" and whether it was rural or wild unkept land and that it "depended on use to which the land is put" (Comments from Q. 18, Scotland).

People were generally aware of the restrictions that could be imposed by forestry practice, water catchments, nature conservation, grazing and stalking practices, and the majority felt all these restrictions, except stalking, were justified on reasonable grounds. The sum effect of these attitudes is a pliant public from the perspective of the landowners.

Landowning perceptions of public attitudes is that "few people are militant about rights to land" (Hughes-Hallet, int., 1985). The relatively low membership and late arrival of the Ramblers Association is used as evidence of this by controlling interests (Grosz, 1983). Millman in his study of outdoor recreation in the Highlands stated that landowners would admit that to protect the amenity of their estate, they would exploit the ignorance of the law (Millman, 1970).

On privately managed lands that have the appearance of occupation or use, trust properties, enclosed or unenclosed farmland with livestock, the sample collectively appeared less clear of the rules. This suggests that the factor of "traditional tolerance" or "no trespass law" might not be as strong in determining rights in some people's minds and be superceded by other factors or concepts, such as trust properties, respect of privacy or livelihood.

In response to this ambiguity, the commercial sector has found a market for packaging fail-safe access. A large body of literature has developed around guiding people around the countryside in response to market demands (McNeish, 1981; Smith, 1978).

In *Book of the Countryside* (Wilson and Gilbert, 1980) 129 areas are listed for walking and Figure 6.1 reveals the types of areas listed. "Open countryside" accounts for only one destination, the rest being primarily managed facilities or famous features like Ben Nevis or the Falls of Clyde, which in their importance carry with them the assumption of access, similar to other concepts like parks.

Figure 6.1 Areas listed as destinations in the countryside

Open countryside	1
Hydro-electric site	1
Historic road	1
Long-distance footpaths	1
Country park	2
Loch shore	2
Canals	2
Mountain tourist path	3
Waterfalls	4
National park direction area	6
Island	7
Forestry Commission sites	8
National Nature Reserves	12
Rural towns and villages	13
Coastal resource	14
Ancient monuments	20
Trust properties	29

Source: Book of the Countryside (Wilson and Gilbert, 1980)

6.3.2.3 Interest group attitudes

Interest groups have been a important factor in making these

grey areas dynamic by either lobbying to formalise the grey areas into public ownership or prevent restrictions.

Many of the groups acknowledged by land controllers and managers have a long history of liasing with each other including: the Scottish Youth Hostel Association, the Mountaineering Council of Scotland (MCS), the Scottish Ski Club, the SROWS, the Scottish Wildlife Trust, and the Mountain Bothies Association (Prior, int., 1986; Mollison, int., 1985). These organisations have tended to work closely with private landowners as well as central government and local authorities. The first four organisations listed have been running for over fifty years, the latter two were created in the last twenty years. They lobby for such things as spatial rights of access to hills (MCS, 1984), advising for or against registration of rights of way, long-distance routes and regional parks. Some of the involvements of the clubs have been discussed under the heading of regional parks and public management of private land, (Section 6.2.2.2).

Managers (Prior, int., 1986; Arbuthnott, int.,1985) identify various interests embodying different arguments. The first is the specialist mountaineer lobby, characterised by prolific writers which have a tight control on the media. Cameron McNeish (1984) Tom Weir (1983), Hamish Brown (1975), Roger Smith (1984), and Rennie McOwan (1983) have been actively arguing that formal provision upsets the balance. These groups place high aesthetic and ecological values on the land and are influential in raising awareness of access issues and distributing information about the nature of public access and the protection of the resource to their readership.

A second pressure is from issue-oriented groups that are typically organised to lobby in response to issues, e.g., Friends of the Earth, Greenpeace. They are indirectly involved with access issues but the central theme tends to be preservation of the natural values of the land providing for social goods such as access for recreation. Long established conservation organisations like the Royal Society for the Protection of Birds (hereafter RSPB) will also join the lobby over issues if common objectives are found, e.g., intensive forestry. These groups also place high conservational values on the land for which there is a social responsibility. This group can be influential in raising awareness of the implications of land use change to amenity values which in turn affect the value of recreation, e.g. over the afforestation of the Flow Country debate (RSPB, 1987).

The third pressure is coming from the grass-root organisations from the cities, e.g., groundwork projects, conservation volunteers (Scottish Conservation Projects Trust, 1985; Central Scotland Countryside Trust, 1987) which have been given political support because of the potential for involving unemployed MSC teams. By improving footpaths and providing basic maintenance to private land, these voluntary groups provide some public contribution to landowners in return for retaining tolerance of access.

The fourth pressure comes from organised recreation groups pushing for formal designations where they can carry out their specific activities, for example, The Holiday Fellowship who market organised recreation tours along long-distance footpaths, etc., the cycle clubs lobbying for cycle paths and horse clubs lobbying for bridle paths and areas. These groups are typically activity

oriented in that they secure arrangements of access for particular activities. They are usually instrumental in negotiating direct arrangements of access with landowners, before relinquishing management to the local authorities.

Finally there are the organisations who are actively involved in purchasing or leasing land and becoming co-operative land managers for member's use, e.g., the John Muir Trust, the Camping Club, waterskiing clubs. These groups essentially remove land from secondary territories into private territories and the membership become landowners as well as users.

These groups lie along the continuum of awareness of accessibility and some have emerged as watch-dogs for change in land use and attitudes of controllers. Changes in land use (discussed in Sections 6.3.3. to 6.4) are critical in raising public awareness of accessibility because changes to the resource will upset traditional use patterns, the amenity and the tolerances of land controllers towards users. Grey areas can shift either way up to white or to black through a change in land use or status. The following discussion examines these changing land uses and the relationship that has evolved with recreation use.

6.3.3 Private management land uses

The commercial and charitable use of private estates for recreation has continued to change with modern demands of the market. There have been several trends in this century towards private management of land for public recreation and conservation operated on commercial and/or charitable grounds (CCS, 1987f). In short, a formalisation of recreation into paying pleasure grounds,

where seekers gain rights of access through payment. When the objectives of private management are conservational and charitable the public demand for recreational use is used to subsidise conservational values. Taxation reliefs, introduced in 1935, and central government grants-in-aid (as of 1967) have provided a public subsidy contribution to maintenance of these properties. An indication of the range of these types of properties is included in Table 6.3.

When the objective of private management is commercial and recreational, the public demand for recreational use offsets capital investments and profits are made. When the objective of private management is commercial, conservational and recreational, curious combinations of free and commercial provisions are made in order to maximise taxation reliefs, national grants and the commercial market.

All these varying types of private provision of land for recreation have raised some of the fundamental problems with visualising the costs of access as separate from the related facilities, including the footpath materials themselves. These problems have included arguments over the ethics of charging for use where footpath costs have been incurred. Subsidy of costs infers the creation of social responsibility and, therefore, the creation of a right of passage. In most cases, enabling bodies have intervened to subsidise facility costs through taxation in order to maintain apparent public rights.

Attitudes of the public in Scotland appear to fall between acceptance that users should pay the costs of use like any facility, and others argue on the rights of access to land implying

a social responsibility. As the survey suggested these attitudes depended on personal factors of philosophy, awareness and experiences. The different types of private provision of land for recreation and the implications to accessibility are described below.

6.3.3.1 Trust properties

The National Trust for Scotland (hereafter NTS) was the first private charitable body in Scotland to take on private management of land for the benefit of the public's use and enjoyment. In the 1935 Act, establishing the NTS, the remit stated the Trust's objectives of "promoting the permanent preservation for the benefit of the nation of land and buildings..." with a constitution to "maintain and manage or assist in the maintenance and management of land as open spaces or as places of public resort" (National Trust for Scotland Confirmation Act, 1935, c.2).

They were constitutionally obliged to provide public access and conserve the landscape and heritage of Scotland which has come to extend from large mountainous properties like Kintail and Glencoe to little houses and historic urban tenements.

Managerial attitudes of the Trust (Morrison, int. 1985) towards the relationship of recreation and conservation are mixed. The remit is for conservation first and recreation second, but there are conflicts in opinion even within the NTS as to how this relationship is balanced. They feel that that they are in the strongest position to enact a honey pot policy and provide the public with free access to countryside properties to relieve the pressure off private landowners. They acknowledge that their

public image is high with their properties well signed and identified in maps, guides and tourist materials (NTS, 1987).

Even within their own properties, they enact a honey pot policy to draw maximum attention to the estates and low ground properties, leaving the extensive mountainous properties out of promotional literature, since the small estates are more easily managed and to which they often charge admission. The Trust operate on the premise that publicity and signing of properties helps manage pressures and they adopt a gatekeeping and signposting role.

Other private trusts have entered into private management of land for conservation with varying objectives and without the official legal status of the NTS, e.g., the Scottish Wildlife Trust and the RSPB. These societies manage access to reserves through zoning use to facilities that can handle visitors. Access to the sites, encourages use and provides opportunities to present interpretive and educational material to the public in order to further conservational objectives (Sommerville, int. 1985; Osborne, 1983).

Table 6.3 illustrates the range of landowning bodies of both charitable and commercial status, and their receipt of grant-in-aid for costs incurred with ranger services, the provision of access and other facilities. The critical factor about this evolving pluralism in provision has been the role of the subsidy of access to these estates, with the private development of commercial facilities to meet the charities operating costs. As the Table illustrates the majority of grants are for access improvements like footpath repair or surfacing, bridge construction and signposting.

Table 6.3 Landowning bodies receiving grant-in-aid from the Countryside Commission for Scotland 1984-1986 [1]

Landowning Body	Grant-in-aid		
Charities/Trusts	Ranger(s)	Facilities for access	Other
Clan Donald Lands Trusts	y	y	y
Findhorn Foundation	n	n	y
Friends of Loch Lomond	n	y	n
Gannochy Trust	n	y	n
Glen Tannar Charitable Trust	y	y	y
Royal Society for the Protection of Birds	(own rangers)	y	y
National Trust for Scotland	y	y	y
Scottish Wildlife Trust	y	y	y
Scottish Railway Preservation Soc.	n	y	n
Estate Businesses			
Balmoral Estates	y	y	y
Cairngorm Chairlift Co.	y	y	n
Cambo	y	y	y
Cawder Castle(Tourism)Ltd.	y	y	y
Clan McLennan Co. Ltd	n	y	n
Cluny House Estate	n	y	n
Community Opport. W. Lothian Ltd.	n	y	n
Darnley Mill Ltd.	(management)	y	n
Douglas and Angus Estates	n	y	n
Earlshall Castle	n	y	n
Hoddom and Kinmount Estates Ltd.	y	y	n
Invercauld Estates	n	y	n
Kelburn Country Centre Ltd.	y	y	y
Management Co. Ltd.	n	y	y
Moniak Castle Estate	n	y	n
Moray Estates Development Co.	y	y	y
New Lanark Association Ltd.	n	y	y
Pitmuies Partnership	n	y	y
Rothiemurchus Estate Ltd.	y	y	y
Scottish Youth Hostels Assoc. Ltd.	n	y	n
Sorn Castle Estate	n	y	y
Starthearn Developments Ltd.	n	n	y
Torosay Estate	n	y	y
Viking Hotels Ltd.	n	y	y
Landmark Visitor Centres Ltd.	n	y	y

Y = yes
N = no

[1] Source: Annual Reports of CCS, 1984, 1985 and 1986

6.3.3.2 Commercial recreation estates

Landowners wishing to preserve amenity and conservational values of estates without losing managerial powers or ownership have recently taken up the third option of running their estates as private recreational estates. The style of these operations varies enormously but they usually have in common the following characteristics: 1) access to a solid educational and or tourist market, 2) appropriate land resources for recreation and conservation and other rural land uses and, 3) personal interest (Prior, int. 1986; Wedderburn, int. 1985).

The CCS, in providing grant-in-aid for access improvements, have the power to say what should be made free for public access and what should be chargeable for. The standard approach is to have various commercial ventures nested within a free public access area. People are attracted to the undeveloped outlying countryside with trails and parking lots and are then exposed to commercial ventures like tea shops, gift shops, trout farms, zoos, wildlife parks, which subsidise the managerial costs of the whole venture plus satisfy public spending criteria.

In some of the estates, access to the land is one commodity of the whole package of services and facilities, and public grant is given to meet initial setting up costs, similar to country parks (White, 1984). On estates that have purely commercial tourist hotel facilities, grant-in-aid might be provided for these businesses to help manage public access to these grounds, e.g., picnic site facilities away from guest areas.

Purely commercial recreation ventures such as the ski industry have had a dual impact on public access, reflected in varying

public attitudes to these industries. The existence of high-level car parks and access roads has drawn informal users to these areas. The ski industry have no special legal control of public access to land in their range since essentially they hold only leases to the land, lifts and facilities. Informal hikers and cross-country skiiers continue *de facto* use of the land while making use of car park and lift facilities to provide greater ease to the hill tops. The promotional literature generated by commercial businesses, e.g., the Aviemore complex, also concentrate users to this area.

6.3.3.3 Tax exemption estates

Some estates that have high scenic or scientific value qualify for Capital Transfer Tax (CTT) exemptions should they wish. The CCS are the arbitrators for scenic value of estates and the NCC for scientific values. The managerial roles of these two agencies with respect to lands under exemption are latent and through administration not active management. The nature of these tax exemptions is that the landowner may be given exemption in return for retaining the values of the land. Where the scenic values are being protected, the landowner is obliged to allow public access. The quirk to the legislation is that though the property must be open for public enjoyment there is no legal clause to make the exemption known to the public since the exemptions fall within the confidentiality of the taxation system.

The CCS have recommended the Treasury on a dozen estates of varying sizes under this form of protection. They ask estates to make the fact of access known conventionally with signs or pamphlets in estate offices. Policy statements suggest that if

complaints are registered from users that access was barred, the CCS should act as mediators to reconciliate the two parties upon the threat of reinstating CTT on the estate.

The NCC act as arbitrators for scientific designations. As discussed under NCC manangement, these exemptions operate like management agreements, and public access is not necessarily an obligation of the landowner and in fact can be restricted to protect scientific values.

Public attitudes to these arrangement have never been solicited (Prior, int. 1986), however, the survey responses suggested that there is little tolerance of users towards landowners if they are abusing a privilege. There is no clear policy regarding the judgement of what constitutes a barrier of access to these properties.

6.3.3.4 Farming and shooting estates

Elsewhere in grey territories, land use changes are critical to influencing the public rules of access. Within hill farms and multiple enterprise patches, seekers and controllers have had a history of compatability. Hill farmers have relatively low capital investment, very little built infrastructure and manage undeveloped land. There is little recourse through the law for trespass and suing since simple trespass over grassland cannot be deemed as damage and vigiliance over extensive properties would be uneconomical. However, the threat of worrying dogs accompanying walkers has been reduced by statute amendments in the 1981 Act which allow farmers to shoot dogs off leads not necessarily in the act of worrying but with the potential for. The implications of

this to the user may be stricter control of dogs which would make hill farming attitudes towards recreational access more responsive (Arbuthnott, int., 1985; Balfour, int. 1985).

On highland multiple enterprise patches, where recreation may be one aspect of their operations within hill farming, deer stalking, grouse shooting, fishing, landowners have had a raised awareness of public access issues. Even where recreation is not formally managed, public access to high land has had a tradition of *de facto* use. If seasonal use of the land is made for deer stalking or grouse shooting, then typically landowners tolerate use offseason. Similarly, deer farming and sheep grazing have seasonal constraints and recreational use is tolerated outside of the breeding and birthing times. With regards to deer farms, there has been a trend to develop their resources for commercial recreational use with access to view the deer as a chargeable facility (McKenzie, int. 1985).

The survey illustrated the public tolerance of farming needs but demonstrated less tolerance to the shooting interests. Managerial attitudes were to channel and zone use around their operations, formalise footpaths during seasons and use signs, booklets, trail guides, and rangers. The following sign was prepared by the East Grampian Deer Management Group which sums up the attitudes.

> "Hillwalkers and visitors are welcome in the East Grampians but are asked to keep in mind that deer management, farm and estate activities continue throughout the year and that undue disturbance in sensitive areas is a threat to the well being of the deer and to the livelihood of farm and estate workers. The stalking seasons involving the use of firearms take place between 1 July and 16 February but the most important period is from 1 September to 20 October being the shorter period.

Please remain on recognised hill tracks indicated by a brown dotted line and where possible notify estate personnel of your proposed route." (EGDMG, mimeograph, 1984)

This sign issues a warning for a period that extends eight months. The reaction to these sorts of signs by users as suggested by the survey, would in some instances probably lead to avoiding the area altogether because of fears of 'disturbing' animals and other people's 'livelihood'.

Some of the more insidious conflicts with deer stalking and recreation have been over the protection of the land amenity as the construction of new vehicular hill tracks have damaged hill slopes and moors. Watson (1984) estimates that 1151 km of new tracks have been built in the last twenty years in response to changing demands of the shooters who prefer to be driven to shooting stances. Criticisms have not endeared the public to the management nor has the increase in public vehicular access on these private roads which is accompanied with poaching, litter, and vandalism. Thus the changing nature of the industry is both reducing the attraction of these areas and reducing managerial tolerances towards public access.

The other tenuous factor of the shooting interests is the availability of the animals themselves. The decline of grouse populations in the last ten years (10% of what used to exist in 1970) in the grouse moors will likely lead to a change in land use, especially in the afforestation sector.

Managerial attitudes amongst the Red Deer Commission and Scottish Landowners' Federation (hereafter SLF) are developing further educational schemes, helped by advice and grants from the CCS (McKenzie, int., 1985; Hughes-Hallet, int. 1985). The

continuation of tolerance depends upon 1) success of the educational lobby on the hill walkers, 2) the continued viability of the deer stalking and grouse shooting business 3) continued co-operation of the landowner. These latter two factors have a great potential for change from various outside and even international pressures or changes, e.g., land markets, tourist stalking market and the growth of outdoor recreation.

6.3.3.5 Private forestry land

Most managers (Prior, int. 1986; Arbuthnott, int. 1985; Hughes-Hallet, int. 1985) agree that the arrival of private afforestation poses the greatest threat to the status quo. Suitable hill slopes and bottom land, the same as the red deer wintering grounds and grouse moors are being turned over as sub-leased plantations to private forestry concerns or developed by the landholders themselves. The scale of this change is very large with up to fourteen thousand hectares of private woodlands being planted per year between 1982 and 1985, an increase in total area of over 40% since 1977 (see also Tables A2.2 and 4 in Appendix 2 for relative areas under this land use).

Managerial attitudes of private forestry companies have presently little degree of tolerance of public access, as the following letter from the umbrella group of woodland owners suggests: "the demand for recreation should be met mainly by Forestry Commission and local authorities which have funds to administer necessary services" (SWOA, mimeograph, 1977).

The fire hazards and the strictly economic objectives of the industry precludes any stewardship. The degree of tolerance is

already variable around land prices, with the greater attention to recreational amenity and tolerance of access where land prices are low, and the style of development and management, i.e., corporate or individual. Companies such as Fountain Forestry have presently no policy to provide for public access with such measures as developed by the Forestry Commission, e.g., signing, promotion, or sympathetic planting schemes (pers com, Dr. R. Worrel, 1987). However, to obtain kudos and continued support of government funding for planting schemes, they might have to take into consideration public use in formal locations. It is difficult to see how these companies will develop a recreational role any more than any other economically motivated industry with no legal obligation to provide public amenity, unless an economic reason is provided.

6.3.3.6 Summary of accessibility in grey areas under private management

Why rules are unclear to these grey areas is not surprising. Public rights of access are not clear even to experienced legal practitioners. Public perceptions are influenced not so much by assumptions of rights, but respecting rights of ownership, privacy and people's livelihoods. The potential for this adaptability to be capitalised on is also emerging as ways of marketing access are found through commercial and tax exemption channels. The expense to the private sector in maintaining a tolerance of access and an attractive land resource with the growth of recreation has become a factor in change. The historical ambiguity has proved to be useful to landowning interests in providing a flexibility and providing a

possible means of economic return through the value of access.

6.3.4 Public management

6.3.4.1 Introduction to grey areas under public management

The remaining perceived grey areas: Forestry Commission land, National Nature Reserves, abandoned railways, and roads lie within the common category of public land management (from Figure 5.12). These lands (and others not included in the Scottish survey, e.g., derelict coal lands and canals) are characteristic in that they are managed by a government body with a primary function of another land use, but tolerate recreational use to some extent (see Tables A2.2 and 7 in Appendix 2 for relative areas of these lands). Differences in perception of access by users arise from the ambiguity of whether public ownership conveys public rights of access.

6.3.4.2 Forestry Commission land

The Forestry Commission manage nearly 7% of the total land area of Scotland (Scottish Information Office, 1984). They have developed with a strong tradition of tolerance for public access by cordoning off special recreation areas. The tradition of tolerance stems directly from the original policies of the Commission which were to expand and preserve a standing stock of timber (United Kingdom. Parliament, 1943). It was a strategically-based policy not an economic one (Miller, 1981; Forestry Commission, 1957; Ryle, 1969) and characteristically the accessibility of these lands has continued to be dependent upon central government attitudes towards this standing stock and the justification of it. Managerial attitudes have had to adapt to the emphasis placed on these lands by the government.

Despite this institutional tolerance there has been a tradition of public criticism of policies which have had impacts on public access to these lands. These varied pressures from users have made the relationship dynamic in its development. The historical accessibility of these land has also influenced the provision of land for recreation as discussed with reference to the 'national park' debate (see 6.2.1.2). A variety of historical factors suggest why the relationship has been dynamic in Scotland.

The Forestry Commission was created in 1919 in order to realise the restocking of timber in the order of three million acres over Britain. The original Forest Act, not surprisingly given the circumstances of World War 1, made very little reference to public access to the lands being acquired. Only under the heading of 'Compulsory purchase' was there reference made to access, whereby any compulsory acquisition of open space or common, where pre-existing public rights existed, had to provide for reasonable public access for "air, exercise and recreation" (Forest Act, 1919, c.58, 2.7).

A major factor in the provision of access was the nature of the land purchased. The Commission underwent great teething troubles in the first twenty years with regard to their inexperience in planting and silviculture. In their urgent bid to purchase land they ended up with large tracts of unplantable land. With the decline of the deer forest industry and the imposition of death duties, many estates were sold off or leased to the Commission who found themselves "acting the role of a private landowner" (Millman, 1970, p.34) and letting the shooting rights on such estates as Glen Isla and what is now Queen Elizabeth Forest Park.

These large marginal tracts of land in the public domain were recognised by central government as a considerable resource for public recreation and a justification for purchase. By 1927, the Forestry Act had been amended to regulate the admission of the public to the Crown forests. Soon after, the experiences of the New Forest and National Parks Committee in England, and the recommendations from the Association for the Preservation of Rural Scotland and the Scottish Youth Hostels Association, led to the first admission of a Youth Hostel in Inchnacardoch Forest and the designation of the first Forest Park, Argyll, on 58,000 acres of unplantable land from an assembled group of estates, including one which had been dedicated to the Glasgow Corporation since 1906 for public use.

The Forest Parks and free access ethic, developed before the war, were affected by a change in policy with the arrival of World War II. The emphasis to maximise acquisition and planting was clearly visible in statute and policy and the management division of the Commission were beginning to itemise threats to the forest resource. Fire, theft, and damage by the public, could be reduced by restricting access through fences, closed road access, etc.

The post-war policy developed the means of managing public access. Unplantable land could be developed for informal public use on the success of the Forests Parks, with three more planned in Scotland, while elsewhere there was recommendations to reduce tolerance of access to the land. This policy brought out the Commission's first real critics from the public sector. A new commitment to the urgency of planting meant that the full impact of the planting schemes on public access to these large land areas

began to be felt. There was no policy directives on styles of planting or types of fencing to accommodate the public. Conversely, new plantations were deer fenced and fire rides were drawn up the hills vertically, conflicting with traditional tracks. The density of planting monocultures was criticised as early as 1936 (Miller, 1981) but the impact of the war and the maturation of the first stocks occupied the Commission's attentions and resources.

Another change in emphasis came in 1957, paralleling the raised awareness of the Fourth Wave debate, when it was argued that strategic justification of the standing stocks was no longer tenable, given the change in warfare tactics. The rationalisation of the forests was that they would be of use for post-war reconstruction and amenity and social benefits. In 1963, a review of policy came. The Commission was told to "bear in mind the need whenever possible to provide public access and recreation" (United Kingdom. Debates, 1963, c.1467-1468) which extended to the appointment of a landscape architect (White, 1985).

A financial emphasis emerged in 1972 when the Conservative government set the Forestry Commission financial objectives, at the same time as imposing a duty upon the Commission to allow the general public as much access as practicable (Forestry Commission, 1972). This duty was worded as a duty to "welcome visitors and meet the public demand for facilities, but not to take the initiative in stimulating demand" (p.39). The policy was implemented by giving recreation a subsidy within the budget, this led to the extension of the existing facilities and visitor centres in the Forest Parks, as well as capital to begin on commercial cabin schemes. The policy also led to the beginning of a grant-in-aid scheme for private

forestry, a scheme that held amenity as one criteria in the application, but no obligation for accomodating recreation.

The seemingly two conflicting goals of economic rationalisation and recreation provision did not conflict until 1979, when the Commission were given the direction to sell off eighty-two million pounds worth of forested land to private investors. The action received considerable outrage from the public as sale to private foresters had no special conditions written in to preserve amenity or recreational access. The forests sold, e.g., Garelochhead, Dunbartonshire, Raera Forest, Argyll (Westlake, 1984; COSLA, letter, 1984) were perceived by some as being lost to the public. In response, the Commission announced that they would try and avoid selling woodlands with high recreational amenity and facilities, i.e., Forest Parks, and marginal lands, and that the majority of purchasers had given no indication that they would wish to deny access (Forestry Commission, letter, 1984). Despite these statements, high amenity areas were still sold as in the upper slopes of Glen Affric. As the discussion on private forestry land demonstrated, however, access was not part of the private sector's responsibility.

Within Forestry Commissions lands themselves, managers (Campbell, int. 1985; Hewitt, int. 1985) felt forests in their remit had enjoyed relatively few conflicts of interest, except for the occassional sporting (stalking) vs. recreation issue, which was avoided by a policy of not advertising the lands as Forestry Commission and erecting Danger signs. They maintained a flexibile system of footpaths around planting and felling schedules. Footpaths were deliberately closed once a year to prevent any formal

claims of right of way. In practice there have been several issues arising betwen the Commission and the SROWS over the closing of legitimate rights of way.

Managers also felt provision had been made for a wide range of activities within the forest parks, including, naturism, boy scouts, forest drives, orienteering and horse back riding. They maintained that a right of access on foot existed but services and facilities provided were offered on the user-pay method.

They felt access to Commission land was a non-issue because of the relaxed liability laws in Scotland, the estate code of open access and the lack of rigidity in the right of way system. However, the problems they could see emerging would be the perceptual problems of the public who did not distinguish between the private and public forestry sector.

The impact of the latest changes in central government phliosophy have been twofold. First, the degree of afforestation has led to the potential for radically altering the nature of access in the Scottish hills from areal to linear access. The impact of concentrating use through corridors in forests leads to severe erosion as is evident in Ben Ledi (pers. com. Dr. R. Aitken, 1988) and increasing the costs of access. The second impact has been to the overall supply of land for recreation. Forest Parks were an important factor when national parks were considered in the post-war years. Their existence was considered a suitable substitute for the provision of large national park properties. Given this fact, if there is a perceived reduction in the supply of land in this sector, there is likely to be a shift in the provision of an equivalent but more formalised opportunities in the form of national parks. The

continual reassessment of national parks by the mediating bodies suggests how the dynamic aspect of access may indeed lead to this provision.

Similarly, other publicly managed lands with a tradition of some public use for recreation might be obvious targets for the state to bring into more formalised recreational use. These lands include those grey areas of railway corridors, National Nature Reserves, canals, derelict lands. Many of these lands are vestiges of industries that no longer have any economic importance and managerial attitudes have begun to change with respect to public access as pressures from the public for use increase.

6.3.4.3 Railway corridors

Railway corridors have been an obvious source of linear access for a variety of recreational pursuits, such as bicycling and bridle paths. This tolerance of use has evolved with the abandonment of lines, but there has been a general failure of take up in Scotland for formalising these corridors resulting in various issues between user groups, the CCS and the British Rail.

The physical and legal constraints of the railway industry have been in existence since 1845, with the Railway Clauses Consolidation (Scotland) Act. This act made it a duty of railway companies to fence off lines and enact bye-laws to prevent trespass and access. The physical barriers to railway lands have remained considerable, iron fences, planting, gulleys, signs, etc. With the nationalisation of the railway authorities in 1947 under the Transport Act, this tradition of restriction continued but within the standardised style of British Railways.

By the mid 1960s, a large number of redundant lines had been created with increasing rationalisations of the industry, many of which remained in British Rail property, and bound by British Rail bye-laws. These abandoned lines have been identified by local authority planners and recreation organisations as suitable recreational corridors since nationalisation, e.g., the Pencaitland Railway Walkway study (Venner, 1973). These corridors have undergone varied histories of purchase, lease, neglect, and development. Corridors in agricultural areas have often been ploughed under with adjacent fields. Land managers interviewed (Fraser, int., 1985; Young, int., 1985) and the CCS (Prior, int. 1986) stated that obtaining British Rail agreements for recreational use of corridors varied from co-operative to impossible, especially when there were structures, e.g., bridges, underpasses, etc. that could lead to safety hazards and liability problems.

However, pressures from interest groups in conjunction with local authority, or central government support have led to the development of some formalised opportunities under the management of local authorities, effectively removing these grey areas into white areas, as discussed in Section 6.2.2.4.

6.3.4.4 Canals

Canals represent another publicly managed industry that has had lands changing out of one use into primarily recreational use. Initially canals had been commercially run and managed by companies up until the nationalisation of the transport bodies in 1947. The British Transport Commission had no obligation at that time to provide for the recreational needs of the public and they had the

statutory power to write bye-laws to regulate public access for reasons of safety and commerce.

The revised Transport Act of 1962, saw the creation of the British Waterways Board (BWB) but there was still no clarification of public rights of access to these quasi-public corridors. The Union Canal, in West Lothian, was officially closed by 1965 and lost its economic significance while the Forth and Clyde was declining in importance. Informal use was made of these canals at the same time as they were being developed into adjoining properties and the highway system. The redundancy of these inland waterways and the potential for recreation led to a national initiative of the Water Space Amenity Commission and the National Water Council, who advised on the recreational potential of canals. The recommendations of these bodies and the new policy directives of the BWB (CCS, 1981) led to negotiations with local authorities for formal designation of walkways along the Forth Clyde Canals (Logan, 1971) and Union Canal, with the first canal ranger service implemented on the Union in 1985.

In this instance the relationship of seekers and controllers has led to the managing authority taking on the mediating role as well, however, like the railway corridor concept the canals have not had as successful a take up as first envisioned by planners because of the loss of quality in the areas through industrial encroachment and the difficulty in negotiation. Canals as grey areas have to some extent become white areas with awareness of opportunities along these corridors being raised through public information from ranger services.

6.3.4.5 Hydro-electric board land

Though managers of hydro-electric lands have never been extensive owners of land, they have adopted to some extent an integrating role of providing energy as well as accomodating recreation at certain points like reservoirs, fish ladders. This has largely been a function of the nature of the industry rather than managerial attitudes that are accommodating. The industry is extensive and constant once facilities are installed and pressures for public use have led to hydro managers providing formal opportunities to some of their properties and tolerance of use in others. But like the forestry, much of the relationship has been modified by critics of the land use itself when it challenges amenity or recretional values.

Public hydro-electric power became a feature of the Highland and Galloway landscape beginning in the 1930s. The hydro projects had a large but localised impact on the landscape with several glens and water rights being acquired. The physical impact was in the infrastructure of roads, dams and buildings which both opened up vehicular access and restricted other forms of recreation, e.g., blocking off of tracks and rights of way up the glen.

The original Scottish Hydro-Electric Board controlled water rights and servitudes of right of way over private land to service sites. By 1963, they had built 200 km of private roads and 140 km of public roads. Originally, there was no legal obligation of the board to provide for public access to either roads, reservoirs or water ways. They had statutory powers to enact bye-laws to restrict access for security and management. Public use of private roads and sites did develop, including an interest in the amenity and wildlife

values of such stations as Pitlochry power station (Aitken, 1977)

The awareness of amenity in the countryside in the 1960s affected the hydro-electric industry as well and policy changes began to address amenity and recreational value of properties owned by the boards. By the late 1970s, recreational sites, fishery ladders and tourist attractions had been formally developed to handle increasing pressures at critical points of access.

On the majority of lands affected by hydro operation, but not in public ownership, the relationship of users and landowners has remained the same as the traditional *de facto* use of these lands that was in practice before hydro was implemented, e.g. Glen Strathfarrer. The survey showed a perceived compatability of hydro with public recreation which suggests why the integration of recreation with hydro land use has been relatively conflict free except over the issue of conservation of amenity.

6.3.4.6 Coal land

Access issues have emerged on National Coal Board land, another source of quasi-state managed land that has the potential for the integration of recreational access. In this sense primary land has moved into secondary land and is now being taken into public land. Several factors have made this a variable process, emenating from the nature of the industry, the complicated tenures on and under the land and the different pressures of users.

In the central belt of Scotland, the nationalisation of the coal industry in 1947 brought extensive lands into the public domain, though the actual industry was privately managed by corporations under the Coal Act and they were managed as

agricultural lands.

There was no legal duty or enabling law to provide public access to derelict coal lands or bings (coal tailing heaps) the latter of which only the solum of the bing was owned by the Coal Board. The Scottish Development Department had a vague remit to reclaim derelict land for recreational and agricultural uses in conjunction with the local authorities (see 6.2.1.5). It was not until 1975, under the Scottish Development Agency Act, that a government agency was given the full responsibility of reclaiming this derelict land in conjunction with local authorities. As the managing agency, they would then be able to make recreational provisions and improve the amenity values.

Of the 18,000 hectares identified by the SDD, 34% has been put back into formal recreational land use, however, there has been a hesitancy of the NCB to release these coal heaps for recreational use because of the economic potential of rewashing the materials with new washing techniques. On other coal lands not in production, schemes co-ordinated by the Central Scotland Countryside Trust (hereafter CSCT), a private trust, have led to improving amenity values, developing commercial forestry schemes and providing formal public access within these uses (CCS, 1987c).

The impetus and financing for the CSCT came from the mediating body of the CCS, because of a recognition of informal *de facto* access over derelict lands by local communities, where other formal opportunities were lacking. To improve amenity and the quality of these lands, there was the move to shift these areas into more formalised recreation areas, out of primary into secondary and public. The implications, in terms of supply to the densely

populated central region, of revitalising these lands and shifting them into public lands in quantity of land are multifold. First, the supply of formal opportunities is expanded. However, informal *de facto* use by certain groups might be curtailed with formalisation, e.g., various motorised activities. Finally there may be long term fiscal problems of supporting formal managed areas which might lead to a selling off of areas, and a loss of potential *de facto* access.

6.3.4.7 National Nature Reserves

Various access issues have arisen since the creation of National Nature Reserves (NNRs) by the Nature Conservancy Council (NCC) established in 1973, and their predecessors under the National Parks and Access to the Countryside Act, 1949. Factors that have been salient are the changing perceptions of the public towards nature conservation, the variety of different tenures on the NNRs, the attitudes of the managers towards the public access and the philosphy of central government towards nature conservation as a use of the land. Attitudes are being changed by both awareness of conservation issues and the politics of rationalisating land uses (Gordon, int., 1985; Kerr, int., 1985; Young, int., 1985).

Since the 1947 Act, the dedication of land to NNRs or local nature reserves, in conjunction with local authorities (see section 6.2.2.4), has been provided for in Scotland. The NCC has had both a landowning and advisory function for conservation, but the advisory and management role on lands outside publicly owned reserves, under the designation of SSSIs, had remained relatively weak up until the new measures in the 1981 Wildlife and Countryside (Scotland) Act with a remit for notification. On smaller properties that they

owned or leased, the NCC adopted a policy of public access which has changed drastically over the years. The initial policy was to 'fence' off properties from the public, with statutory powers to create bye-laws to prevent access, though on the larger properties like Beinn Eighe and Cairngorms this was impractical.

Over the years several factors have changed this trend. First, the implementation of bye-laws was problematic. They were lengthy to enact since they varied with every reserve (unlike the Forestry Commission bye-laws which would come into effect upon purchase) and had to be publicly advertised. Second, influences from the United States on interpretation changed ideas about excluding the public. The NCC realised the positive effects of using the reserves to raise awareness of the environment and their own image and they initiated a programme of nature trails, interpretation centres and visitor facilities.

Most of the reserves are not owned by the NCC and in the variety of lands which fall under different designations (Table 6.4), different agreements about public access have arisen. Where agreements for management of SSSI's have been made, the owners have no obligation to make these sites available to public access. On some of these sites, financial reimbursement for their preservation may have taken place through the Capital Transfer Tax exemptions or management agreements. In the notification letters, the NCC may draw up a list of operations which they think would be damaging to the conservation values. In this regard, public access could be deemed to be damaging and legal restriction of public access to SSSIs would be available to owners of these sites. Though to date this has not happened, the NCC are aware of the implications for

public access to lands in which public money is being spent.

Table 6.4 National Nature Reserves: a summary of tenure data (as of 31 March 1987)

TENURE	NUMBER OF RESERVES UNDER TENURE
OWNED	11
LEASED	3
NATURE RESERVE AGREEMENT	35
LAND HELD AND MANAGED BY AN APPROVED BODY	1
OWNED/LEASED	1
OWNED/NATURE RESERVE AGREEMENT	11
LEASED/NATURE RESERVE AGREEMENT	4
OWNED/LEASED/NATURE RESERVE AGREEMENT	1
TOTAL	67

Source: Nature Conservancy Council, 1987, p.91

The policy of allowing access to reserves relies heavily upon the warden service and educational or interpretive materials. There is no distinct branch of conservation education in the Council so managers (Young, Kerr and Gordon, int. 1985) feel that the ability to manage the public is sadly restricted by the lack of finance. Access is restricted now only at the smallest sites and then only by the act of not advertising the location. Elsewhere, the policy is to sign reserves and provide welcoming facilities. This is particularily evident at sites like Creag Meagaidh, where recent costs of acquisition from the private forestry sector have been controversial, leading to a policy of promoting public access to justify the expenditure to the public.

Finally, in face of decreasing opportunities within the forestry sector, land designated for conservation is a convenient substitute. Political will to rationalise conservation through

public access is influencing managerial attitudes.

Public perceptions tend not to differentiate between full state ownership and private ownership and conflicts of interest tend to occur on lands not in full control of the state or local authority, e.g., Forvie National Nature Reserve, near Aberdeen, where navigational rights asserted by recreational boaters and windsurfers, fishing rights asserted by the bailiff of the Ythan estate and a designation for nature conservation exist rather tenuously side by side.

The relationship between users and landmanagers for conservation has never been easy, and continues to be a continual issue demanding reassessment and imaginative policies for zoning and managing. The notion that the two land uses of recreation and conservation are symbiotic has contributed to public perceptions that public access is compatible nature reserves. Management policies have relied on apparent restrictions through signing, or lack of signing, planting and physical restrictions, while current rationalisation philosophies see the privatisation or user-pay of NNRs as one means of generating revenue. Public access remains a difficult consideration of management since access is seen as a publicly recognised justification for tying up land out of 'productive' land use.

6.3.4.8 Roads

Roads have been another target to which both mediators and users have seen the potential for integration of land uses. Much of the relationship between controlling road authorities and users has been due to a rising demand for more amenity and recreational values

to be considered in the design of the roads. The CCS demonstrated an awareness of the issue by commissioning a study in 1976 to investigate the potential for recreation with the design of rural roads (Skinner, 1976). Though this study was not primarily interested in pedestrian, horse or cycle access to roads it did recognise these aspects of recreational use as well as examine the impact of new roads to amenity and traditional recreational use. The study followed on the reorganisation of local authorities whereby roads became the joint responsibility of roads, planning and leisure.

Despite these initiatives, recreational use, e.g., bicycling, has acquired very little recognition within the existing road structure either in changes to safety or design standards, and the lobbies of cycling groups (Lothian Cycling Campaign, 1984) continues to ask for recognition in local planning and expenditure. This is evident in the failure to incorporate any provision for bicycles or pedestrians along the high amenity route of the new A82 running alongside Loch Lomond. Some bicycle lanes have been established within bus lanes in the larger cities, but development tends to be piece meal and there is little enforcement or obeyance by motorists.

6.3.5 Summary of accessibility to grey areas

Accessibility to these lands of varying combinations of quasi-public and/or private ownership, management, designation and rights of way is unclear to the public. The confusing issue of the legal structure of the land resource is made more unclear by the variety of different managerial and central government attitudes towards recreational use, depending on the compatability of the primary land

use with recreation. Contemporary legal and planning changes have not altered the historical flexibility afforded the land controllers to change the land use to ensure "best use" and subsequently change their tolerance towards recreation.

Large scale changes in the land use, like the growth of forestry have led to restrictive attitudes towards recreation. Conversely, previously black areas of commercial industrial use are becoming white areas under public management in land renewal projects as they loose their economic significance. The shifting nature of recreational land use in these grey areas creates a dynamic supply of land with the colonisation of recreational land use occurring where other uses of the land are temporarily stopped, changed or redundant.

The role of the State has been in some cases to act as an advisor to land controllers or subsidise traditional land uses that will have the effect of helping public conservation and recreation, but their role has been generally weak.

The critical factors influencing the relationship have been external ones like grouse populations, the timber market, commercial recreational ventures or agricultural policy. Less variable factors are the assumptions made by the public to determine the accessibility of land in these grey areas, for example, the perception that their rights are unclear on land that is fenced for forestry.

The influence of interest groups has moderated accessibility to features and across land in these grey areas of private management through two channels: the first has been a process of formalising opportunities by either encouraging commercial recreational

facilities, demanding more public control and ownership or preserving amenity through more stringent planning controls. The second has been a pressure to retain the traditional status quo by lobbying directly with the controllers to retain accessibility and amenity through retaining attitudes of stewardship and tolerance. This situation relies on a minority watch-dog public lobbying the controllers directly as well as indirectly through the government. Overall, these grey areas are constantly being shifted into deeper or lighter shades of grey to black or up to white, altering the total supply of land available for recreation.

6.4 Black areas of accessibility

Black areas represent places where rules are clearly defined regarding a lack of rights of access. Black areas perceived by the survey respondents included: farmland with crops, commercial/industrial lands, institutional land, defence land and motorways (see Table 5.12).

6.4.1 Arable farm land

Within arable land there have been no legislative changes regarding the nature of *injuria* in trespass. There have been changes in agricultural policy which have affected the nature of the land use and led to the reduction of the old infrastructures. In the lowlands this has meant the loss of hedgerows, ditches and banks, footpaths, marginal patches of mosses where tolerated *de facto* access was carried out with no threat to the farmer and no trouble to the walker (Barr *et al*, 1986). The increase of wire fencing, loss of hedgerows and more intensively planted areas, has

led to the reduction of these informal networks which represents a reduction of supply of accessible land.

The impact of the agricultural policies to the crofting communities in the Highlands and Islands has begun more recently with capital grants for fencing improvement and drainage in areas previously devoid of intensive fencing and management. Problems of blocking *de facto* access have been anecdotal, but has raised itself as an issue in the argument of the reduction of real supply by changing land use practices.

Managerial attitudes towards recreation on arable land are consistent; intolerance where damage is likely (Balfour, int., 1985; Arbuthnott, int. 1985; Lonie, int. 1985). Typically, farmers of single enterprise patches try and avoid any involvement with recreational use. They feel there is no tremendous public demand for informal access on to arable land, little scope for recreation, and there is a legal remedy against it because of potential for damage. Pressures do occur in localised areas, e.g., urban fringe of both Edinburgh and Glasgow, where managers testify that farmers have been driven out of business because of pressures (CCS, 1987c). Here local authorities and private trusts have purchased land and begun operating city farms along the same lines of private land managers for recreation with mixed social and commercial provision as discussed in Section 6.3.3, e.g., Darnley Mill, Glasgow.

Another initiative has been the pioneering work done in the Strathclyde region, Clyde-Calders Urban Fringe Management Project, "to encourage better access to the countryside" (CCS, 1986c, p.13) by formalising walkways, restricting casual access to farms by providing planting schemes as buffers and for amenity.

Generally, managers say that for profitable lowland farms, public access is "an unmitigated evil" (Balfour, int., 1985) and farmers would be uninterested in access agreements or management agreements, because of the high economic returns on cash crops. Should these cease to be a productive and continuous source of income, then recreational businesses are being increasingly turned to as in England. The role of agricultural policies in influencing attitudes and, therefore, the value of access is significant.

6.4.2 Private industrial land

To date a few industrial initiatives have made provision for public access to their lands on a commercial and promotional basis, like whisky distillers and textile manaufacturers. Most of these initiatives are connected to the tourist sector. Businesses like Glenfiddich in Dufftown open their gates for tours but provide access to picnic and pleasure grounds as one part of the whisky tour package. Access to these properties tends to be on a very small scale and concentrated to points of access.

The Scottish Tourist Board are a motivating factor in this trend. Managerial attitudes (Adams, int., 1985) support formalised chargeable recreation facilities and centres and will promote and grant-aid them. They deliberately avoid promoting free access elsewhere because it has no direct effect on the economy.

Some local tourist boards use promotional literature as management tools to take pressure off local authority recreation provision and turn it onto the commercial sector (Fraser, brief, 1985).

6.4.3 Residential land

Residential land remains generically under the category of private territory. Legal developments have increased the powers of individual owners or tenants with regard to preventing trespass and use by tightening the criminal aspect of access in close proximity to dwellings. Similarly, public attitudes to restriction of access near homes remain traditionally in support of the protection of privacy and safety, as the survey revealed. The physical infrastructure of private homes also creates an intricate mosaic of impenetrable blocks of land throughout the urban and suburban areas, between which the network of roads and pavements wind. The consideration of public access to small residential properties is relevant with regard to the informal use of suburban and urban gardens by the owners themselves.

No research has been made on the role of private land in providing recreational space on an informal basis. This kind of use is made within land that is owned by the users, their friends, families or landlords. In this sense the relationship between controllers and seekers is most critical. The disparity of opportunities individuals have to open space or gardens has obviously been recognised since the first Public Parks (Scotland) Act 1878, yet the factor of the changing nature of home, garden, second home and landownership has obviously altered the disparity of opportunities and the degree to which it could also influence the total pattern of accessibility.

6.4.4 Instititutional land

In a similar vein, the relationship between controlling

institutions and recreational users of institutional land, e.g., schools, universities and church grounds, is typically one whereby members or attendants of those particular institutions assume access as one facility within the privileges of membership. On a broader more general public level, the sample do not assume public rights. However, there is an observance of customary use in local cases, e.g. Edinburgh University George Square, Stirling University.

With changing policies for rationalisation within schools, universities, technical institutions, even government institutions, and more individual public control, there may be changes in attitudes to obtain revenue through charging of access to grounds and structures of these institutions on a commercial basis in order to raise revenue. In this sense, informal use may be precluded by commercial provision.

6.4.5 Defence land

The relationship between defence land controllers and seekers has had a substantial history of local tolerance of use (Scotland. Ministry of Defence, 1978). There has been an informal policy towards recreational and conservational land use on defence lands in Scotland. The policy statements have listed the priority as defence, agriculture, conservation and amenity in that order (Schoefield, 1983). Traditionally, the physical signs of defence land have been warning signs that do not expressly forbid access on non-intensively used tracts and the use of warning flags to alert users when active use is in progress. It is clear that most of the survey sample do not perceive they have rights but use is made by some seekers and is tolerated by the Ministry of Defence (MOD) in

some respects.

The MOD have been developing a different image through initiatives in nature conservation and the liason with nature clubs in these initiatives. For example, in the large SSSI of Torrs Warren monitoring and use had been made by public groups (United Kingdom. Ministry of Defence, 1983).

However, with regard to general public access, the MOD is directly opposed to enabling public access by coming under designations like "park" (see Pentland Hills Regional Park 6.2.2.2) or any other public designation that might imply public access as a right or a facility. The factor most affecting policy regarding public access is the nature of warfare and the importance of dry land training for the armed forces, and the relative priority of conservation over recreational use, since management of recreational use presently comes under the priority of protecting conservational values.

6.5 Short summary of accessibility in Scotland

The final picture of accessibility in Scotland is that of the tenuous nature of recreational use within the existing structure of land uses. The relationship is complex and dynamic but is predictable given the historical infrastucture of tenure and legal principles in which it has developed. The varying public perceptions of access can also be related to the continuing polarisation of recreation coupled with troubled efforts to integrate it with other land uses.

Most of the land area in Scotland lies in the grey to black portion of the spectrum with shifts of small individual tracts of

land into the white areas for formal provision. A review and comparative discussion of the implications of this case study are made in the final chapter, following the B.C. case study.

CHAPTER 7

CONTEMPORARY ACCESS ISSUES AND MANAGEMENT IN B.C.

7.1 Introduction

The B.C. survey revealed similar perceptions of accessibility to those obtained in the Scottish survey; a consensus of opinion about specific public and primary territories and a wide range of perceptions of the grey areas which made up the great proportion of the land resource.

Viewed in the context of the preceeding Scottish case study, many similarities in both the perceptions of access and the factors which shape this relationship are evident. The following discussion follows the same format as the previous chapter, identifying the factors in the smaller context of the land categories from white to black with contrasts and comparisons with the Scottish case study highlighted.

7.2 White areas of accessibility

Public territories were identified by the sample as parks, foreshore, designated trails and sidewalks (see Table 5.13). These categories are all managed, as in Scotland, by the Crown to some degree for public access (see Tables A2.8, 10 and 12 in Appendix 2 for relative areas of these land types). Unlike the Scottish sample, parks are exclusively publicly owned by the Crown, though the diversification of processes that move lands into public use has begun to develop, e.g., pluralistic ownership and responsibilities. As in Scotland, the factors influencing these processes have been

predominantly other controlling interests. However, issues have emerged with the movement of land into and out of public territory that demonstrate a raising of public awareness of accessibility and a difficult contemporary relationship with the historical legacy.

Because recreational land is managed on four levels of government, each type of designation has a particular set of constraints and managerial attitudes specific to it. Therefore, the issues and management of accessibility within each of these designations is discussed within the context of each designation.

7.2.1 Park land

7.2.1.1 Introduction

Perceptions of public access to park land in B.C. reflect the historical tradition discussed in Chapter 4. Parks are synonymous with access, conservation being integrated into the whole, when and where convenient. Within parks, the relationship between users, landholders and mediators has developed into a highly dynamic one because of various factors. First, is the move by the provincial government to integrate other uses within park land and second, the diversification of types of park land. This has resulted in park land being taken out of the public sector and put into secondary areas of mixed management through different processes and under different designations.

The first process has been the designation of various tiers of park land, modelled on the American system and similar to the Scottish system. Since the war, a tiered park system has formalised out of the legislative powers to create reserves from the four statutory authorities, the municipalities, the regional districts,

the province and the nation (see Table A2.22 in Appendix2).

7.2.1.2 Municipal parks, sidewalks and foreshore

The parks evolving out of the municipalities have been the primary source of recreational land in the urban areas. Local authorities have always created single use space for recreation under local jurisdictions, again deriving from the historical tradition of creating pleasure grounds, so there has been little experience of users negotiating access with landowners in urban areas.

Parks and access corridors to waterbodies and foreshore continued to be designated in the historical tradition. As in Scotland, the acquisition of land developed from an *ad hoc* system to one based on formulae and standards that prescribed the suitable amount of acreage/unit of population, e.g., the Victoria Parks used the formula of 10 acres per 1000 people. Other changes in attitudes amongst municipal planners included the move away from horticultural parks to children's play areas which resulted in a proliferation of play-lots, playgrounds, corner parks and city squares, typical of the movement in many North American cities in the 1960s. Input from the public on this sort of provision was absent and planning authorities were carrying out an institutional tradition. However, this relationship has begun to change for various reasons.

There have been changes in public attitudes towards maintaining natural ecosystems in cities and also changes in recreational pursuits in cities, with increasing popularity of running, walking and cycling. Both these trends have led to a dissatisfaction with the traditional greenfield corner parks. Similar to Scotland, this

has led to various issues arising with regard to converting disused railway corridors to bicycle routes, the construction of scenic paths and ribbon parks, and the integration of public recreation with public sector developments, e.g., False Creek which incorporates public walkways, water parks, landscaping and foreshore facilities within industrial and housing land developments.

Some initiatives have been successful with co-ordinated efforts of individuals with local municipalities, the private housing development sector and the commercial sector creating and managing urban trails or ribbon parks that have a quasi-public status. Access might be subsidised by the private sector to promote use of their commercial facilities, or be shared amongst joint interests in a title of land.

The appearance of urban trails groups in Victoria and Vancouver follows a pattern evident throughout the larger North American cities, e.g., Chicago and San Fransisco; user and amenity groups arising out of the need to provide better trail development and greenbelt protection in the urban areas. The discussion on interest groups in B.C. (Section 7.3.1.4) identifies the groups and their role in establishing recreational trails within the existing land use structure. In summary, they seek to establish a reform in legislation so as to achieve the following: 1) to secure access agreements with landowners; 2) to change priorities in favour of recreation with regard to the allocation of money and time by municipal authorities; and 3) to change municipal attitudes to different ideas of integrating recreation within the cities, (Urban Trails Group, mimeograph, 1976).

These groups are responding to the perceived shortcomings in

the existing legislation and land use structure of cities: shortages for places to walk, no way to implement and maintain access to and across land in towns, and a reduction of the resource base. Though early legal principles of land reservation and prescription provided the means to meet these demands, they have been eroded by a lack of priority ascribed to recreation as a legitimate land use. Examples of this include the management of public corridors being placed under management of the road authorities who in many instances simply fail to add them to their maintenance lists (Laird, int. 1984).

Another example is the alienation of foreshore rights to port, industrial and private interests along the shorelines of the Gulf Islands and the east coast of Vancouver Island where only 3% of the foreshore is made available by municipal authorities (Brooks, 1979).

Besides users effecting pressures on municipalities, many landowners have been lobbying the provincial government for some means of public subsidy for the private provision of free access. Evidence of this was in the response through the Recreational Land Act that was passed in 1975. The Act endeavoured to reward private landowners with a tax rebate if they provided free access to the public. This was the first attempt by the government to effect an integration of public recreation with private land uses. The Recreational Land Act of 1975 was never implemented, and was eventually repealed in 1979. According to Cooper, who revised the second draft in 1975 (int., 1984), this was because of problems of definition and lack of terms of reference.

Problems were identified with determining what percentage of taxation the landowner should be relieved of and what length of time

the relief should be granted. The Crown determined it would be cheaper to purchase the land outright and keep it in the public domain. The problems were seen as insurmountable and the Act was repealed. However, its appearance in statute does indicate an awareness of the need of land for recreation in the cities beyond which the municipalities were able to provide.

Further changes have included the growth of public interest in municipal parks with the stabilisation of towns in remoter areas. Within the hinterland industrial communities, there has been little concern with formal recreational opportunities. The transient industrial work force has had no long term commitments to areas, e.g., MacKenzie, Tumbler Ridge, and recreation has tended to be concerned with motorised forms of recreation connected with the hunting and fishing pursuits on Crown land. This is illustrated in a letter from Kennedy, Programs Director of the Regional Development Commisson of the Fraser-Fort George Regional District in central B.C., to the Outdoor Recreation Council of B.C. (hereafter ORC) in 1976.

> "the major problem with successful development of trail systems [around urban area] is to mobilise the user and to change local government attitudes to priorities for recreation." (Kennedy, letter, 1976)

Managerial attitudes to access provision varied greatly (Laird, int. 1984). Attitudes were typically tempered by the municipal remit. Like the Scottish local authorities, it was a case of individual interests in implementing what legal opportunities were already there. The factors influencing involvement in access issues were practical and perceptual: 1) economic constraints; 2) priority given the recreation budget; 3) degree of awareness by local

councillors as to what the real needs of the public were; 4) degree of fear of public vandalism and misuse of public property; and 5) nature of local politics concerning landowners who could veto planning decisions which they felt would be not in their interest.

In summary, the pressures to diversify the resource base for recreation have been met by problems. Bound by rather inflexible principles of single use and trespass, there has only been one system, that of Crown acquisition and management. Tolerance of landowners for informal access has never been present, and land uses within the city have not developed with any concern for integration of recreation. This has resulted in loss of amenity and a built environment that is not suited for integrating recreational use.

The rapid development of cities on grids negated the tradition of a network of rights of way for pedestrian use. In this sense urban space problems in B.C. differ from the British experience because there have never been artifacts of footpaths and rights of way available for recreational use. Pressures are put on the Crown by recreational user groups either to impose legislation to acquire and formalise access and preserve the resource, or to act as an animateur for cooperative management and subsidy of landowning costs.

The former represents a trend to move black and grey areas into white, the latter represents a move of grey areas into lighter shades of grey, but the problem of loss of control of land is always present.

7.2.1.3 Regional parks

Unlike the Scottish case, the park system has been seen as a

publicly owned and managed one, not simply a management framework. Regional parks in B.C. are the next level of parks; set up in 1965 under the Park (Regional) Act (S.B.C., 1965, c.43) to accompany the restructuring of local authorities and plans for regional districts.

A regional park is defined as land set aside for parks or trails within a regional district. The significance of this relatively new administrative structure was that the Regional Parks Boards, appointed for each regional district, could bring a relatively fresh approach to these new parks, trails and their management. These parks are often located in urban fringe areas, and are characterised by being relatively natural environments and having a low level of formal recreational facilities.

The particular relationship of the regional parks with the public has varied with the composition of the Boards. In the Capital Region and Greater Vancouver, both Boards have developed distinctive brands of acquisition and management with varying involvements of volunteers from the community. In Greater Vancouver they have attempted to fill a gap in municipal provision, but essentially they have been low profile, unmarketed, single use, extensive properties in outlying districts. Land is being taken out of provincial management as unalienated land and put into regional ownership. This has represented an active shift of grey areas into white.

The process of bringing land into regional parks has been relatively conflict free, as these properties have included unalienated Crown land, unused power line corridors, hills and mountains, coastal or river tracts and urban fringe land and been met by approval by both adjacent landowners and users. The uptake

of regional trails has been far less successful with the problems of assembling easements for a recreational corridor across a variety of tenures. Regional trails in the Capital Region have only been implemented across single tenures to date despite efforts to create a trail the length of the region.

In most respects, it has not been a case of opening up new areas of accessibility, but packaging existing access opportunities under a new designation of regional park. Similarly, there has been little movement of land out of regional park status, though the beginnings of this process have begun with temporary leases being issued for commercial use, e.g., the temporary lease of land to a motor racing syndicate. This was met by a stong local lobby against the lease (Weinberg, 1985).

Again, single use of publicly owned land with an assumed facility of access has guaranteed an important resource for urban regional districts. However, the trend to rationalise has led to increased marketing of the parks as a tourist resource, and a diversification of uses. The impact on public perceptions of access is likely to be a rise in the awareness of the regional parks, coupled by a shift of some of these lands in and out of unclear status with varied tenures being imposed.

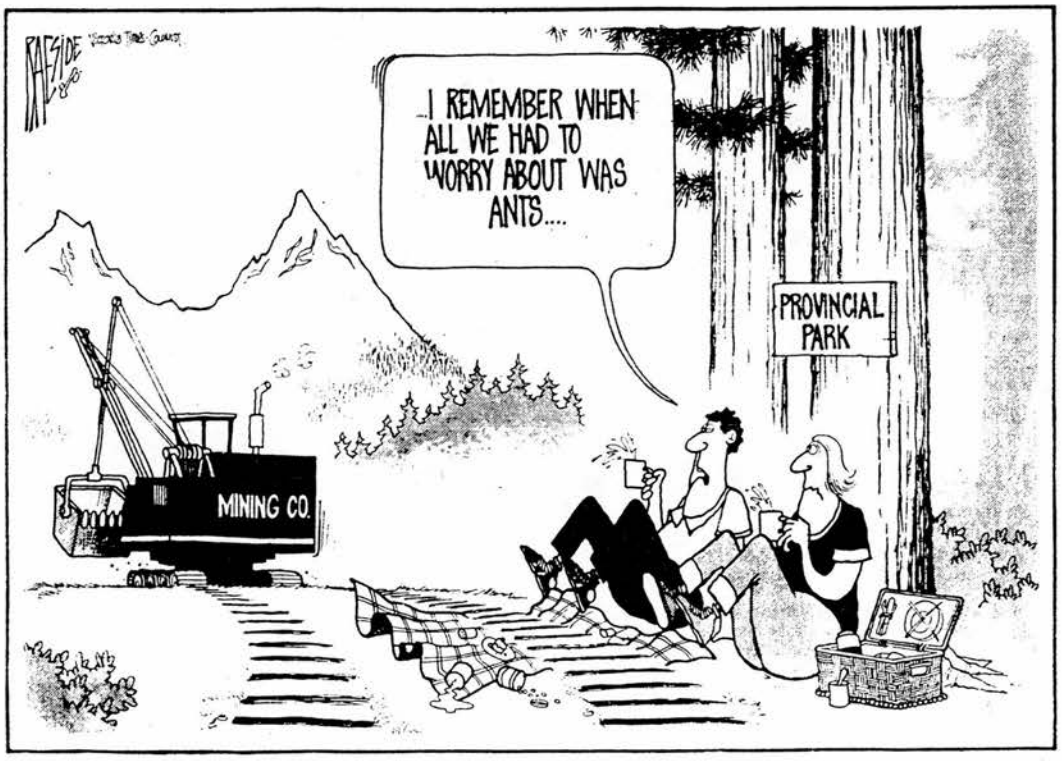
7.2.1.4 Provincial parks

The history of provincial parks in B.C. was discussed in Chapter 4. The legacy has been one of flexible boundaries and principles of "best use", with industry, recreation and conservation vying in the relationship. This has led to a very dynamic process of land coming into and out of park status which has caused conflict

within the relationship of seekers, controllers and mediators.

Issues have arisen over conflicting attitudes towards the integration of logging, mining, hydro-electric power, commercial tourism and recreation, and conservation interests, necessitating the shrinking or restructuring of park boundaries (Youds, 1978)(see Figure 7.1).

Figure 7.1 Cartoon of recreational use of provincial parks



Source: Raeside, 1986

The relationship of outdoor recreation and this variety of land uses has been problematic almost from the start. When levels of use were low, changes in boundaries or the introduction of industrial activities did not perceptually affect the rights of the public to the land for their recreation. Pressures from interest groups came in the 1970s with a rise in consciousness about government mismanagement of what is perceived as public lands, coupled with an increased availability of public funds which led to organisation of pressure groups to make use of these funds. Whether it was the threat to public rights of access or to the resource which was in communal ownership, public groups voiced criticisms. At the same time, public use of parks has expanded greatly (see Table A2.20 -21 in Appendix 2) and has brought greater pressures to bear on the management of access to the parks. The role of interest groups in developing these issues is discussed in Section 7.3.1.4 with relation to the role of interest groups in Crown land issues.

One role of these interest groups has been to lobby land controllers for security of boundaries. This lobby is not unlike the Scottish lobby on landowners to retain land uses compatible with recreation and/or conservation. These groups typically place high values on the resource and are arguing with the same single use ethic of the Crown. Provincial government attempts to integrate uses are met with skepticism by these groups because they are not viewed as independent of the industrial interests. User groups are pushing for park boundaries to remain as they are without sections of parks being moved into grey areas of multiple use.

Another role of interest groups has been to safeguard parks from privatisation. Fiscal concerns amongst provincial park

authorities have led to rationalisations of resources, e.g., lodges, Alpine and Nordic ski facilities, trails and catering, which have brought considerable opposition from groups such as the national watch-dog organisation of the National and Provincial Parks Association (NPPA), who have organised over the last twenty-five years to safeguard conservational values and public interests in the parks. They perceive land in parks is threatened by becoming primary territory, accessible only by payment or membership, in essence a change in the conceptual meaning of a park.

Final criticisms have come from the environmental lobby who have felt that ecological protection has been incompatible with public use because of the focussing of public recreation "into specific areas not necessarily well-suited for mass use" (B.C. Department of Recreation and Conservation, 1974, p.20).

Mediating attitudes expressed from both district and head offices (Moffat, int., 1984; Ahrens, int., 1984; Delikatny, int., 1984; Petersen, int., 1984; Campbell, int., 1984), have been influenced more strongly by the arguments presented in the broader context of government land management and other public pressures. The first factor is the low priority of the parks remit within the total remit of Crown land management. Mining, forestry and other industrial uses have a clear priority over recreational or conservational uses, evident by the nature of park designations which are non-binding for perpetuity, and the system of prioritisation within the levels of government. These governmental pressures from the mining, forestry, etc. sectors (discussed at length with reference to Crown land management) have influenced the availability of land to come under park status and the removal of

land out of park status.

Moffat and Ahrens also acknowledged the pressures from the public wanting to get controlling interests in the land, including: 1) the lobby pushing for rights to own public domain individually, for example, commercial recreation ventures and recreational organisations, and 2) the retention of public rights of access over public domain for recreational use. There was the expression that one could not honour one without affecting the other. The political pressures at the present were for private ownership and management. The constitutional strengthening of property rights was stated as one example (Farquahson, int., 1984) as was the Social Credit party philosophy that "ownership brings its own custodial care" (Ahrens, int. 1984).

Meanwhile, the seekers have influenced the relationship by their increasing levels of use, diversification of use, and changing attitudes towards parks. Levels of use over the years (see Table A2.20 in Appendix 2) indicate some of the pressures these park lands have come to receive. In the provincial parks between January 1 and September 30 of 1981, 9,090,000 visits were recorded attending the parks in the Lower Mainland, Vancouver Island and Thompson-Okanagan regions (B.C. Ministry of Lands, Parks and Housing, 1982a).

Diversifications of use have been evident in the development of access issues within park boundaries. Managerial attitudes informed about access conflicts within sites pointed to the conflicting types of recreational use, especially motorised and non-motorised (Delikatny and Moffat, int.. 1984).

Conventional wisdom was the source from which government managers all drew their assumptions about public perceptions of

their rights of access to land.

> "We are a young country. . . there is a strong public attitude and feeling that the public domain is open to them, Crown land, parks and anywhere they have a legal entitlement to cross over land." (Ahrens, int. 1984).

7.2.1.5 New provincial designations

With these kinds of demands, and with a remit to provide "an equitable and efficient utilization of public resources for outdoor recreation" (B.C. Lands, Parks and Housing, 1984, p.29) government mediators have taken two paths guided in theory by principles of 1) co-operation with other agencies and groups, 2) equitable distribution of opportunities, 3) complementarity to the three other levels of parks, and 4) conservation for perpetuity (Trachuk, 1985, p.19).

Actions based on these principles have followed two paths: the first has been to formalise use to park zones with the weak legislation that exists and rely on the other agency provision of alternative recreation areas, e.g., Forest Service sites and B.C. Hydro-electric Corporation "Generation and Recreation Sites", (Delikatny, int. 1984). The integration of use outside and within parks under their management is envisioned through the identification of trails to contain, direct and manage use. Nothing more is perceived as possible within their remits.

The second path has been to expand the range of legal designations and diversify into multiple use planning concepts like the regional and special parks designation in Scotland (Campbell, 1976).

The first task was to accommodate the rising numbers of

visitors to provincial parks, as well as manage the conflicting conservational and recreational interests and revise the zoning system. The Class A-C system devised in the 1930s has been retained with some modifications. There are now three other planning designations: 1) a Nature Conservancy Area (NCA)(wilderness areas within parks), 2) Recreation Areas, which are "areas for the application of the principles of multi-use" (B.C. Ministry of Lands, Parks and Housing, 1974, p.54), 3) Designated Lands under the Park Act which include lands designated for recreation but not under an Order-in-Council, e.g., private lands for which the Crown has a legal agreement for recreation, leased lands, Crown land established under the following acts: Environment and Landuse Act, Heritage Conservation Act, Greenbelt Act. These could include trails, paths along water bodies and waterways owned by the Crown and available for public use. At the time of research, the Outdoor Recreation Division of the Ministry of Lands, Parks and Housing who would normally administer these designated lands was being closed down.

In practice, much of the latter category of Designated Lands have not been implemented, though the designation of "Recreation Areas" has been adopted in land areas that have commercial skiing and forestry operations because of its loose controls. The manifestation of multiple use has been to either rezone park boundaries when industrial land uses move in, to restrict access to the area of industrial operations or substitute one park area for another.

Many of these existing designations are perceived as unsatisfactory by both pressure groups, and mediating bodies and the perception of these multiple use zones is vague and unclear.

Similarly, there has been little political will in making multiple use work effectively, for instance, the Crown Land Fund set up in 1980, which received monies collected from the sale of Crown lands, was set up as a means of purchase of land for recreational and conservational purposes. The Fund has been rarely implemented, and used to subsidise unrelated ventures. However, with provincial park managers expressing that traditional provincial parks are near saturation on the basis of goals, societal trends and legislation (Trachuk, 1985), new ideas are being put forward by the recreation and conservation lobby.

One policy development to create better access opportunities has been the declaration of a Recreation Corridor Policy in 1985 (B.C. Ministry of Lands, Parks and Housing, 1982b). This policy was to identify a way to designate, plan and manage river and trail recreation on important rivers and heritage trails to counterbalance the impact of hydro-electric projects, mining, forestry and private ownership.

The policy followed the national initiative of establishing Agreements for Recreation and Conservation (ARC) with respective provinces for linear trails and waterways, which included the Alexander McKenzie Grease Trail in B.C. These corridor policies are similar to the implementation of long-distance footpaths in Scotland. However, the issues arising from these long-distance trails have been similar to their Scottish counterpart. The difficulties is negotiating agreements of varied tenures along the lay of the trail over several hundred miles, with a large number of landholders including Indian bands, has proved the exercise time consuming and costly. The implications of concentrating use to

linear access have already been realised along a comparable trail, the West Coast Trail on Vancouver Island, which has undergone severe problems from over use and concentrated use (Sierra Club of B.C., 1980).

Other practical policies to manage and contain use in existing properties have been to use new methods of channelling people, signing, zoning, path construction and improvement and charging for use. The conflict between conservation and recreation has still been seen as the lesser of two evils by public pressure groups who see the more insidious conflict as that between industry and conservation.

The most recent evidence of concern by the government for the change in public attitudes regarding park policy was the appointment in 1986-87 of an eight-man committee to investigate 24 conflict areas, including parks and wilderness designations. Many of these areas have had some official preservation designation but the demands from the industrial sector have caused the government to renegotiate the designations. Public outcry precipitated this committee enquiry prior to the spring election of 1986 (Wilderness Advisory Committee, 1986).

Despite recommendations for bringing new lands into the park system, there had not been any land placed under full protection one year on.

7.2.1.6 National parks

As was discussed in the historical section, national parks have developed with a tradition of a more rigorous protection from industrial use, since they are created by statute and not an order-

in-council. As a result, there is not such a dynamic process of change of national parks out of this designation into grey areas of multiple use with industry. The relationship has become problematic in the creation of new national parks and the management of the high levels of use with a mixed remit for recreation and conservation.

Addressing the latter point first, levels of use have been a considerable pressure on the relationship as use levels in Table A2.20 of Appendix 2 illustrate. For example, in the national parks in B.C., the number of visitor days in 1985 was nearly six million at the natural parks (Canada. Statistics, 1986) of which there are four in the Rockies covering 400,000 hectares and one on the west coast of Vancouver Island of 18,000 hectares. Responses to these pressures have been to zone vehicular, equestrian and pedestrian use through trails, permits, quotas, reservations, shelter honeypots, site management and visitor education, (Halverson, 1985). Restricting access to parks based on incompatability of recreational type is done through bye-laws.

On the second matter, federal government legal designations vary greatly from provincial park designations. Parks are incorporated in perpetuity under existing statutes. However, a 1986 report suggested that park regulations "present an insurmountable obstacle to economic development" (McClaren, 1986, p. A5) in their emphasis on conservation and recreation. The historical policies regarding park objectives for tourism and multiple use, are coming full circle. Recommendations of the report are to allow mining and logging within national parks and to allow a multiple use approach that would allow greater economic benefits from tourism.

On top of mounting pressures to integrate use within the

national parks, there have been problems with acquisition of new land. The source of the problem is the process whereby the federal government have to negotiate reimbursement to provincial governments for changing it into federal lands. There is a historical rivalry between federal and provincial governments over the control of Crown lands. Seizure of park land is viewed with great criticism by the provincial government since they interpret this as one process of centralisation and a removal of potential natural resources out of provincial control. This was evident by the huge administrative problems and issues that emerged with the federal government trying to acquire Pacific Rim and South Moresby (Times-Colonist, 1986) precipitating the comment by the premier of the province that he will not "give control of the area to easterners" (Dearden, 1987).

Ideas are beginning to be put forward that suggest new planning and management mechanisms similar to the special parks designation in Scotland whereby land is not purchased but agreements or easements of access and/or amentiy conservation are negotiated (McCallum, 1985) as discussed in Section 7.2.1.5 with regard to Agreements for Recreation and Conservation.

The implications of both these factors on accessibility within national parks are that national park land is approaching a saturation point and that pressures on these famous, and potentially integrated areas, will increase with the result of more formalised access within the boundaries.

7.2.1.7 Summary of accessibility to white areas

Access to parklands has become an issue in B.C. - a coming of age. The factors causing the conflict have been the threats to the

resource and demands from various other interests in the land. The strong public perception of public ownership and perceived associated rights of access are being used for arguments that are fundamentally based on issues of management. Since the government is both controller and mediator, resolution becomes a matter of political will and priority.

Parks and recreation areas have been identified by government land controllers as the logical area for recreation and tourism, leaving the other agencies the task of their central obligation. However, within the parks themselves mounting pressures of recreational use and other industrial use are perceived as threats to these lands. Within the provincial parks, multiple use designations typically mean rezoning boundaries between park use and industrial activities, even substitution of one park area for another; designations that have the least ambiguity to the public. The recreation corridor policy is the only mechanism by which these other agencies see the integration of recreation into their lands, i.e., as isolated corridors managed by the Parks board, but it has proved difficult to implement.

It is early days for the implementation of new policies devised that put forward multiple use concepts in the national parks but it appears that other measures for expanding recreational use under the management of park lands other than acquisition is being investigated. These measures require the negotiation of real rights of access from the bundle of proprietorial rights of the different land users.

The historic principle upon which B.C. land development was based, exclusive use, has created expectations that cannot be

realised in view of the increasing demands on the land resource. People are looking elsewhere to meet their recreational needs and they are looking increasingly towards the grey areas of Crown land where similar issues are evolving between the different interests in the land.

7.3 Grey areas of accessibility

The perception of grey areas in the surveys included a variety of designations all of which fall under the title of Crown land: unused Crown land, unpaved roads, riverbanks, powerlines, historic trails, railways and abandoned rail corridors, Crown land with livestock on it, and utility corridors (see Table 5.13). Since 90% of the total land base falls into the grey category, this area represents a vast resource (Table A2.9 and 11 provide some figures on the relative areas of these land types). Perceptions of accessibility to this resource have been strongly influenced by the historical legacy of ambiguous rights of access.

The historical pattern of land uses, the controlling attitudes of the Crown and the variety of tenures on the land are a result of a distinctive development of a large resource by comparatively few people. The questionnaires revealed a great range of understanding of this resource and its legal structure. The Ministry of Forests administers most of the land so the discussion will begin with the relationship that has evolved between these managers and the industrial and recreational interests.

7.3.1 Crown forestry land

7.3.1.1 Introduction to accessibility of Crown forestry land

> "And so the burden of War's anxious years lifted at last
> B.C. bestirred itself... and as the Peace emerged
> So did prosperity and confidence and hope...
> New forces swept to power - Large dreams were born...
> ...A railroad took a bold spurt forward
> On the long way north.
> Peace River unlocked a richness in its earth
> And started a massive pipeline thrusting South;
> ... B.C. means business...

> In every corner of the Province now - the surge is on!...
>
> In Fishing and Shipping!
> In Lumbering and Pulp and Paper manufacturing
> Hydro-electric Developments and the vast Construction Projects!...
> The expanding Mining industry!...
> And in Agriculture, Dairying and Ranching
> In every field, new records of achievement make Big News - and History!!!
>
> Exerpt from *Wilderness to Wonderland,* a play written by the B.C. Centennial Committee of the provincial government in 1958 for schoolchildren, p.50.

The above quotation summarises the relative economic importance of the industries to controlling attitudes during the post-war era. The pattern of land tenure in the hinterland had ensured 96% of the total land base being retained in Crown ownership, with over 90% of the total being placed in the portfolio of the Minister of Forests.

This era is characterised by the "cut out and get out" mode (Council of Forest Industries, mimeograph, 1984), adopted by the growing corporate timber interests. The industry expanded hugely, which resulted in three major impacts on access to these lands. The first was the development of more types of land tenures leading to a complex and ambiguous division of rights in the resource, which influenced perceptions of ownership and access. The second was the growth of logging roads into the hinterland which increased the vehicular accessibility to the resource. The third was the change in the resource itself through land use practices which influenced the physical accessibility to the land. Central to these changes were the attitudes of the controlling interests themselves to the relative value of recreation.

7.3.1.2 Controlling attitudes

The process of developing different types of tenure on the land to accommodate the varying needs, followed the historic doctrines of tenure and estate, the forests being retained as the *regalia.* The major impact on public attitudes was a confusion of what these different tenures represented in terms of possession, management, designation, ownership and public access.

One of the major developments of tenure was the idea of a management licence whereby management of timber reserves could be contracted out. The implications of this were that private interests took on a longer term interests in the land and were effectively gaining control of both the land and the trees which would strengthen rights to restrict access. These special timber licences were elaborated so that holders of the licence could enter into agreements with private landholders to combine this land into one management unit reserved for the sole purpose of growing successive crops and thus private and public land became merged into management units.

Both these management measures were welcomed in their day by critics of the "cut out and get out" mode, since the "endless supply of timber" (Vancouver Island, 1859) was appearing somewhat finite. The implications of the alienation of the land from recreational interests were not recognised until the 1980s. Instead the recreational interests slowly emerged through the 1960s and 1970s as watch-dogs on the commitment to management.

Because of the tremendous economic incentives of the timber industry, benefitting government through royalties and leases, management commitments were pushed under the table in the bid for the profits flowing into the economy. The old principle of granting

security to the 'best' users of the land had ensured a carte blanche to the company powerhouses. As a result, there was no commitment to the silviculture and conservation aspects of forestry. This was to precipitate criticisms of both resource management and the provision of access by the public beginning in the 1960s. The following section examines the development and nature of public attitudes towards access and management issues in the last thirty years.

7.3.1.3 Public attitudes

The expansion of the timber industry served to be a double-edged sword with respect to its relationship with outdoor recreation. On the one side, the network of roads penetrating into the hinterland opened up territory specifically to the wildlife enthusiasts. Following on the heels of the loggers, the hunting and fishing lobby and alpinists gained road access to previously physically inaccessible lakes, peaks and hunting territory. The development of off-road machinery for industrial use had its spin-off on recreational use and for the first time there developed a conflict of use within the linear networks to Crown land. The other effects felt of this introduction of the public into hinterland were, 1) members of the public were viewing the extent of the resource for the first time and 2) the public were viewing the extent of the industrial exploitation of the land and seeing the impact on wildlife habitats.

On the other side, the physical impact of the logging industry also created a very real restriction on access by foot. During active logging, a forest is inaccessible perceptually, physically and legally. Once the logging companies leave there is the physical

restriction of debris and the the disinclination to go there because of the low quality of the scenery. With second growth forests, the young plantations are so dense that again access is restricted, and there are the additional safety hazards of fire and pesticide spraying. Recreational destinations of the alpine, lakes and rivers can be physically restricted because of the inaccessible timberland between. Jones, of the Federation of Mountain Clubs (FMC), suggested that:

> "The only areas reserved from logging are glaciers and snowfields, rock and tundra, alpine slopes without merchantable timber and areas that are environmentally sensitive. The prime use in the rest of the land is, logging. Any other activity can take place as long as logging has priority and is not unduly interferred with. People will hike in forests prior to their being logged but will shift to other locations after logging occurs...logging roads can facilitate some forms of recreation like hunting and fishing". (Jones, 1983, p.56)

Though vehicular access can remove these constraints, as can helicopter and float plane access, the implications to access on a pedestrian level are severe. As a result of these impacts, the relationship between controllers and seekers has developed into a confrontational one. There have been three lines of attack from the public lobby which includes sporting, recreational and conservational bodies. The following discussion looks in detail at the rise of the interest group lobby, their involvement with bringing access issues to light and their impact on the relationship between the forest industry, the provincial government and the public.

7.3.1.4 Case Study: history and attitudes of the interest groups

The involvement of interest groups in access issues began originally through the wildlife interests (Chilko Dredgers Wildlife

Club, B.C Wildlife Federation) who lobbied for protection of linear corridors, e.g. trails and rivers, such as the resolution to call for a "Wild Rivers Act" in 1968, and the demands for a Centennial Trail in 1967 (ORC, 1982; Terpenning, 1982). Conservation of resources was intrinsically linked to the argument and rights of access were seen as one means of assuring both values along the corridors.

With increased availability of public funds for organisations in the 1970s and a massive growth in outdoor recreation, there was a great proliferation of outdoor organisations. Involvement with land and access issues developed through various forums for discussion and opportunities to contribute to Crown land management policy (Greater Vancouver Regional District, 1974; B.C. Department of Recreation and Conservation, 1974; Pearse, 1977; ORC, 1976, 1977 and 1983; Urban Trails Group, mimeograph, 1976; Campbell, 1976).

These various forums helped consolidate groups with recreation, conservation and sporting interests and their views towards recreational use of park lands, forest lands, wilderness, vacant Crown lands, and concepts of integration with other users of the land that they perceived as compatible with their interests, e.g., ranching, commercial Crown leases, forestry, hydro-electric power corridors, railway corridors. These forums culminated in the creation of the Outdoor Recreation Council of B.C. (ORC) in 1976, an umbrella organisation that represents the views of those groups.

These groups can be categorised into conservation groups, that are issue oriented or have a long term interest in the resource, and user groups that have varying commitments to the resource for their needs (Campbell, int. 1984). Access issues have

dominated the concerns of many of these groups over the last twenty years (Terpenning, 1982). The following policy statements were made at a ORC conference addressing access issues in 1976.

> "The public should be made aware of the contexts and situation where access is restricted and should be informed as to the reason for this" (taken from summary of conference written up in Trails and Access Programme for British Columbia, 1976 by ORC, p. 19)

> "..trails, special use areas and the provision of access routes to land and water are the means by which a great number of outdoor recreationists participate in and enjoy [recreational activities]... there are many places in this province where recreation should be integrated with forestry, mining, cattle grazing, agriculture, and urban development." (ORC, 1976, p.1)

The ORC has published a handbook on recreational access to B.C. (ORC, 1984), that critically examines public rights of access to public land and itemised the legal changes that this umbrella organisation felt would be needed "to protect declining rights of recreational access in British Columbia...it appears that we are loosing more rights than we are gaining" (ORC, 1983, p. 38).

It is important to note that the executive committee of the ORC were ex-patriated British citizens; for example, Cullington who initiated the subsequent review into recreational access had previously worked for the Countryside Commission of Scotland. Exposure to European legal mechanisms for integration composed much of the content of a paper for discussion in 1983.

The consultations of the ORC with member groups and individuals has raised a great awareness of both the legal structure of B.C. and the issues concerned with access to public lands. The publication of the access discussion paper had just come up when representatives were interviewed, hence the level of awareness is high.

This following discussion examines the nature of the

involvement of interest groups in terms of their lobbying pressures drawn from the interviews. Three questions were asked: 1) what access issues were they involved in; 2) what kind of changes were they pushing for; and 3) what were the main factors influencing their arguments.

Twenty-seven organisations are included in this discussion of which ten are personal interviews, the remaining views were drawn from club policy statements presented to government on their views, or publications (Table 7.1). Table 7.2 presents a tabulated summary of the results.

Table 7.1 Interest groups represented, abbreviations and source of data

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CONSERVATION GROUPS

FEDERATION OF B.C. NATURALISTS (FBCN) (FBCN, brief, 1975)
NATIONAL AND PROVINCIAL PARKS ASSOCIATION (NPPA) (Dearden, brief, 1984)
SIERRA CLUB OF WESTERN CANADA (SCWC) (Chow, int. 1984)
BRITISH COLUMBIA HISTORICAL FEDERATION (BCHF)(Spittle, 1983)
WEST COAST ENVIRONMENTAL LAW ASSOCIATION (WCELA)(Rich, int., 1984)
WESTERN CANADA WILDERNESS COMMITTEE (WCWC) (Western Canada Wilderness Committee, undated)

HUNTING AND FISHING GROUPS

CONSERVATION AND OUTDOOR RECREATION EDUCATION (CORE) (Bendall, int., 1984)
B.C. INTERIOR FISHING CAMP OPERATORS' ASSOCIATION (BCIFCOA) (Carpendale, int. 1984)
COLUMBIA VALLEY GUIDES AND OUTFITTERS (CVGO) (CVGO, brief, 1975)
STEELHEAD SOCIETY OF B.C. (SSBC) (Rogers, int. 1984)
B.C. WILDLIFE FEDERATION (BCWF) (Kenyon, brief, 1974; McDermid and Cherniak, 1979)

ISSUE ORIENTED GROUPS

HAIDA GWAII WATCHMEN (HGW)
FRIENDS OF CLAYOQUOT (FOC) (FOC, 1985)
FRIENDS OF THE STIKINE (FOS) (FOS, 1985)

RECREATIONAL USER GROUPS

FEDERATION OF MOUNTAIN CLUBS OF B.C. (FMCBC) (Rutter, int. 1984)
ISLAND MOUNTAIN RAMBLER (IMR) (McInnis, 1975)
B.C. HORSE OWNERS ASSOCIATION (BCHOA) (BCHOA, brief, 1975)
CANOE SPORT OF B.C. (CSBC) (Floyd, int. 1984)
WHITEWATER CANOEING ASSOCIATION (WCA) (Creer, int., 1984)
SKIIERS' CROSS-COUNTRY TOURING ASSOCIATION (SCCTA)(SCCTA, brief, 1975)
URBAN TRAILS GROUP (UTG) (UTG, mimeograph, 1976; McMinn, brief, 1982)
LAPIDARY, ROCK AND MINERAL SOCIETY OF B.C. (LRMSBC) (Armstrong, int., 1984)
DIVE B.C. (DBC) (Flemming, int., 1984)
BICYCLING ASSOCIATION of B.C. (BABC) (BABC, int., 1984)
ORIENTEERING ASSOCIATION OF BRITISH COLUMBIA (OABC) (Preston, int. 1984)

MOTORISED USER GROUPS

B.C. SNOWMOBILE ASSOCIATION (BCSA) (Reed, brief, 1975)
B.C. MOTORCYCLE ASSOCIATION (BCMA) (Carey, int., 1985)

Table 7.2 Involvement of interest groups and nature of access issues

MAINTAIN BOUNDARIES	PREVENT PRIVATISATION	CONSERVATION PROTECTION	BETTER PROTECTION OF RECREATION INTERESTS	CONTROL OF VEHICULAR ACCESS	DESIGNATE CROWNLAND UNDER PROTECTED STATUS	LOBBY FOREST COMPANIES TO PROTECT RECREATION	BETTER PROTECTION OF CONSERVATION INTERESTS	LOBBY FOR NEW LEGISLATION	LOBBY FOR USER-PAY SYSTEM	INTEREST GROUPS
PARK ISSUES			CROWNLAND ISSUES					GENERAL ISSUES		
		✓	✓	✓		✓	✓			CONSERVATION GROUPS
✓	✓	✓			✓					FBCN
✓	✓	✓			✓					NPPA
✓					✓			✓		SCWC
✓	✓	✓	✓		✓			✓		BCHF
✓	✓	✓	✓		✓			✓		WCELF
										HUNTING/FISHING GROUPS
			✓	✓			✓			CORE
			✓	✓			✓			BCIFCOA
			✓	✓			✓			CVGO
			✓	✓			✓	✓		SSBC
			✓	✓			✓			BCWF
										ISSUE GROUPS
			✓			✓	✓			HGW
			✓			✓	✓			FOC
					✓		✓			WCWC
			✓		✓	✓	✓			FOS
										USER GROUPS
✓	✓	✓	✓	✓	✓		✓			FMCBC
✓	✓	✓	✓	✓	✓		✓			IMR
✓					✓			✓		BCHA
					✓		✓	✓	✓	CSBC
					✓		✓	✓	✓	WCA
					✓				✓	SCCTC
					✓			✓		UTG
			✓				✓	✓		LRMSBC
			✓		✓			✓		DBC
								✓	✓	BCBA
					✓		✓	✓	✓	OABC
										MOTORISED USER GROUPS
								✓	✓	BCSA
					✓			✓	✓	BCMA

The relationship between the demands of the outdoor recreation groups and the supply of land under varying uses and tenures is undoubtedly problematic. The relationship is perceived as needing change or evolving to a crisis situation by all but one of the groups. The collective recommendation, directed at government and managers, was for legislative remedies and changes in attitudes by government towards recreational use.

With respect to the legislative reform, the demands are for a formalisation of rights, through designation of land or corridors in a single-use or equal use status (Table 7.2). To date the law has passively determined the relationship in the following ways: by not defining rights of access at all but allowing the public to assume rights of access as one facility within their public ownership of land, i.e., unalienated Crown land; tolerating use but not addressing specifically public rights of access for recreation on certain alienated Crown lands, e.g., transport corridors, timber licences, utility corridors; and by defining where the public may not go through the mechanism of preventing trespass by landholders.

Park lands and recreation areas are the only areas to which the law directly addresses rights of access for outdoor recreation. Foreshore is not directly addressed in law as a corridor to which the public have a right of access for recreation but its existence as such is well entrenched in the public consciousness. In many cases the demands of these groups do not vary much from the demands of the early colonists and they are demanding that the Crown employ the same principles of "best" use of land with a grant of security.

Generally these groups are demanding the law take a more active role in and out of parks to formalise rights of access for specific

uses either through planning mechanisms or the control of land-ownership. Integrated uses are proposed where legislation ensures the sound management of the recreational values, e.g., scenery, vegetation, the footpath itself, and wildlife. However, there appears to be a lack of confidence in management to ensure the recreational values that have no definable market value.

With respect to changing attitudes, users are demanding that government managers and policy makers recognise the value of recreation and conservation interests, and the interests of this sector of the public in public land management. Within their arguments there was often a confusion of concepts and terms. There was not a clear identification between the lobby to protect rights of access so as to protect resource values at the same time, and the lobby to protect rights of public ownership which they perceived would carry with them rights of access and the right to protect that resource.

The factors fuelling this perceived need for change are typically the loss of place or territory through either alienation through the law or change in the land use with or without a change in tenure. Various scenarios to which the groups have suggested as problematic are listed as follows:

1. The resource is not threatened but rights of access have been changed by a change in tenure, e.g., Crown land to private or lease. As a result they seek to secure formal rights (linear or spatial) or the purchase of land (inherent rights of access thus flowing with private ownership);

2. A change in the land use but not tenure threatens the values and perhaps even physical access, e.g., Crown land being logged. As a

result, they seek to protect their rights and hopefully protect the resource with the rights of access or secure both the land resource and rights to it with a change in tenure in their favour;

3. The resource is threatened by other user groups and, as a result, the different users seek to remove rights of certain users or rezone other users in different areas.

Whether the groups are pushing for fundamental changes in the structure of land tenure and use or merely trying to secure their own interests within the existing tenure and uses - "grabbing a piece of the pie" - depends upon the nature of the pursuits and objectives these clubs have. When the pursuit depends upon protection of the resource in a spatial sense, e.g., hunting, it is not enough to secure rights of access within a use of land that threatens these values, though an activity like motorcycling needs only the securing of a right across land to satisfy the needs of the individual, since the protection of the values inherent in the land around are not vital to the activity.

The implications of this difference in perspective is that interest groups cannot have a unanimous voice, conceptually or practically, with the result that the effect these groups have upon the attitudes of the managers and politicians is diffuse and woolly. To date, the legal structure has only been mediated through very weak, policy statements of consensus with no fundamental change to the structure of tenure and land use itself.

Consensus statements typically have been a formalisation and polarisation of rights of access in site specific areas or along corridors. This is reflected in the national policies of corridor agreements and the provincial policies of recreation corridors.

These are policies to isolate a linear recreation area within other tenures and uses of land. The painting of black and white lines has had to continue since this sector of the public has had to employ the same opportunism as the commercial interests.

Further clouding of the issues was evident in the varying interpretations of integration. Some viewed integration as a legislative mechanism that isolated a recreation area or a trail within or through a primary land use. Others saw it as equitable sharing of the land resource so as to protect the needs of all interests in the land. With no firm agreement of what the concept implied, a further watering down of any recommendations was made. The following comments provide an indication of the range of attitudes expressed by these interests.

> "Crown land belongs to all the people of B.C. and the public rights to recreational access must take precedence over any other use of land (except in interests of public safety)" (Roesner, 1983)
>
> "only royalty will be able to hunt.." (Bendall, int. 1985)
>
> "access is an inherent right to be protected" (Rutter, int. 1984)
>
> "motorcyclists and horsemen do informally utilise utility rights of way on open Crown land. A formalisation of this procedure would be beneficial." (ORC, 1977, p.121)
>
> "These days it seems that all outdoor enthusiasts have to spend just a little bit of time campaigning for their access rights. Because if you don't make an effort, you're going to find a locked gate across the access to your put in." (Lang, 1982)
>
> "anywhere there is a gate you assume it's private or leased" (Armstrong,int., 1984).

These attitudes has been represented by key critics, for example, Ken Farquharson of Talisman Land Consultants was a spear-heading figure in the public lobby for maintaining public rights of access to Crown land. He commented that, "we [the lobby] first got

morally outraged when forest roads were closed off in the 1960s" (Farquharson, int., 1984). He felt the issue became a moral one when people developed a hunting or walking territory that was cut off, leading them to become involved in the issue. He believed the average recreationist had less of a right of access over Crown land than the Scots do on private land - and that the legal constraint was stronger than the physical ones of terrain. He regarded the forestry industry's perception of recreation access as simply a logging road. Mr. Farquharson was brought up in Scotland.

With respect to Crown forest land, these groups have been instrumental in three lobbies: 1) for better protection of recreation interests within the Ministry of Forest's remit; 2) to encourage the ministry responsible for parks to remove land out of the forestry remit and have a protected status put on it (see Section 7.2.1.4); and 3) to change attitudes within forestry companies for better recognition of recreational interests.

Of the first lobby, the attitudes of the forestry management have been to contain public use. The best illustration of this in terms of what the public are led to believe is found in an American tour guide of B.C. It drew visitor's attention to the fact that

> " the B.C. Forest Service...does not see recreation as one of its responsibilities. Hiking opportunities are restricted by the current rarity of easy trails." (Spring and Manning, 1982, p.5)

Of the third lobby, the early negotiations with logging interests were met by an uncooperative spirit. This is illustrated by a a study on the recreational potential of the Bute Inlet Route, a historic wagon road that crosses several regions from coast to interior in central B.C. This study highlighted the main physical

and social constraints of this access corridor (Kershaw and Spittle, 1979). They listed the physical constraints of: terrain, the vegetation, the climate, and the presence of grizzly bears. The perceptual constraints were primarily the lack of aesthetic appeal of logged areas and the social constraints included irate ranchers, Indian bands and logging companies who, "can be expected to oppose any attempts to open their logging roads to the public" (p.65).

These public attitudes and lobbying pressures have had some influence on policy and legislation within the Ministry of Forests. The logging companies, having had exclusive use of the forests for the past 75 years, have also brought pressures to bear on government to increase their security; the main threats being nuisance, intrusion, vandalism to facilities and fire. The evolution of legislative responses to access and management issues is examined in the following section.

7.3.1.5 Changes in legislation and policy

In the early 1960s, policy was written into the Timber and Range Branch to deal mainly with growing conflicts over use of industrial roads between the companies and hunting and fishing interests. The policy was termed, accurately, the "bottle cap" policy, i.e., whenever a proliferation of bottle caps appeared at specific sites in Crown forests, some facilities to contain use were introduced, e.g. garbage cans and picnic tables. These sites nearly always corresponded with fishing lakes and were monitored occasionally by forest rangers.

Monitoring of numbers began in the early 1970s, with first estimates of use at under 200,000 (British Columbia. Ministry of

Forests, 1982). By 1979, improved monitoring and actual increases in the use of the forest recreation sites had risen to 1.6 million. There were 1200 sites in the Ministry of Forests' inventory by 1982.

The outcome of the ineffectual bottle cap policy did not serve to resolve the larger issues of recreational rights of access to forest roads, and the deterioration of the land resource itself. The access dispute emerged into a power struggle for government support between the B.C. Wildlife Federation (BCWF) and the logging companies (Terpenning, 1982). The companies began locking gates at every access point and recreationists burnt them down. The conflict led to a threat of an Access Bill but the fact that the majority of the roads were built using public monies led to an uneasy yielding from the companies (Farquharson, int. 1984).

In characteristic style of the B.C. government, intervention was only considered through the threat of hard-measure legal reform. Though a resolution was arrived at between the wildlife lobby and the logging companies, a whole new generation of interest groups were joining in the access issue from different perspectives.

The dispute over the land itself was a far more insidious one and less resolvable by public relation moves by the logging companies. The lobby to protect the resource grew with the lobby to spell out recreational rights (ORC, 1976, 1977, 1983 and 1984). This was because legal rights of access could also be used to maintain conservational values, e.g., recreation corridors, recreation rivers, forest trails, heritage trails. Policy development regarding these designations is discussed in Section 7.2 to 7.2.1.7. The complexity of the disputes were not restricted to interest groups versus logging companies or the government but

between groups themselves, e.g. motorised groups versus non-motorised.

Throughout the next two decades, arguments over vehicular rights of access and foot trails in active logging areas remained the main issues, reflected in forest recreation policy. In some sense the road issue became a convenient platform for the companies to diffuse public criticisms of any matter of company policy and practice on Crown lands. The Council of Forest Industries (CFI), an umbrella group representing industrial interests, was still addressing issues regarding the integration of recreation with forestry with statements such as this in 1983, in a memo to the ORC.

> "The practice of sustained yield forestry by our industry has already provided about 10,000 miles of permanent access roads to remote areas. These roads are open to the public outside of working hours and every year of logging activity adds appreciably to this bank." (CFI, 1984, p.2)

Effectively, recreational access became synonymous with industrial roads and the industry was failing to address the issue of integrated land use in a broad spatial sense. One change in policy came indirectly through new initiatives on range and forest land administered dually by the Ministry of Forests and the Ministry of Lands, Parks and Housing. In 1974, the foundations of an integrated policy were laid with the introduction of the Co-ordinated Resources Management Plan (CRMP). This Plan was initially set up to integrate the forestry, mining and ranching interests in specific areas. Throughout the 52 million hectares (British Columbia. Ministry of Forests, 1975) in the Forestry Ministry, 71 areas had picked up the planning approach by 1982. Within this process there was the planning mechanism to integrate recreation, though the concern initially was mostly commercial recreation and

professional guiding companies. With regard to public access, the planning approach could address public access issues by the insertion of claims into the planning "portfolio" by interest groups in the area.

The first areas to take up the planning process had little public access involvement as they were primarily concerned about the control of grazing patterns through improved fencing. Unless public spokesmen registered their needs on behalf of the public, public access would suffer a perceptual restriction of land through these "improvements", i.e., the association of fences with occupation.

However, groups began to recognise the importance of this planning process to implement their demands, this awareness was raised by the impetus of the Royal Commission on Forest Resources in 1975, and the setting up of a Forestry Land Use Liaison Committee (FLULC) who tackled the issues of access to roads for recreational use and access to forest lands, spatially, in view of protecting the resource. Two consensus statements were produced addressing these two issues, (FLULC, mimeograph, 1979 and 1981).

Other policy initiatives that have developed are those concerned with the creation of multiple use Provincial Forests. The Royal Commission report (Pearse, 1977) suggested the relationship between recreation and the forest industry proceed through their vision of integrated land use, implemented by drawing lines around sections of forests that would support integrated use and calling them Provincial Forests. Areas targeted for settlement and agriculture were assumed to be incapable of integrated use, while forestry was compatible.

For the first time in B.C.'s history a concept of integration

of uses of land was being specifically asked for in statute. However, the unfamiliarity of the concept, the lack of definition of recreation and the pervasiveness of company power led to very vague legislation that gave no protection to recreational interests (MacKay, 1982). The Chief Forester was given the power to designate Crown land as a "recreation site or trail" (Forest Act, R.S.B.C., 1979, c.140, s.104-107) including historic trails, subject to the consent of the holder of an interest in the timber, and liable to change at the Forester's discretion. To date there appears to have been no recreational trail constructed by the Forest Service, though the Chief Forester has endorsed organisations showing interest (A. Jones, pers. com., 1983). The acting Chief Forester in the spring of 1984 admitted that he was unwilling to let forest groups go out to construct trails because of the fire hazards (Young, mimeograph 1982).

With respect to logging roads, the Highway Act and Highway (Industrial) Act (R.S.B.C., 1979, c.167 and 168) clarified the difference between industrial private roads and public roads. A public road was a road where 1) it had been constructed with public monies, 2) logging operations had been completed and 3) the licence had reverted back to the forest service. Use on active roads could be restricted to after-working hours for safety reasons by the logging companies. Policy generally remained that of managing the present usage never to promote recreational use. The image the Forest Service had aimed at was being complimentary to the park system not in competition with it.

In 1982, four years into an economic recession that saw the closing down of much of the industry, a policy to implement the

Provincial Forest concept was announced by the Ministry of Forests. Essentially, what this policy meant was the beginning of a reduction in the holdings of the Crown resources. The Director of the Recreation Branch (Marshall, int., 1984) commented that 1984 would be the watershed in ministerial responsibility of land through reorganisation to other ministries, alienation to the private sector and the increase of management licences to take the responsibility off the Ministry of Forests. This privatisation policy was paralleling much of the conservative privatisation initiative in Britain and United States. The impact has been the same on public attitudes as the Scottish study. Recreational and conservation groups are concerned that there will be no tolerance of public access and no leverage as a public asserting public rights if land is privatised.

7.3.1.6 Managerial attitudes

To a great extent, managerial attitudes to access have been influenced by the fiscal and political arguments of maintaining access with economically viable interests in the land (Marshall, int., 1984). They have traditionally viewed recreation as a negative aspect of forest management that has to be controlled alongside fire and pests.

The interviews held with various government managers and bureaucrats (Marshall, 1984; Thompson, 1984; O'Riordan, 1984) substantiated the actions of the industry as being polarised and not concerned with integration issues. They were concerned with the use of Crown land for forestry but not within the broader context of the entire land resource.

The tendency for single use was rationalised through a variety of different factors: 1) the factor of scale; as Marshall pointed out, their's was "a resource of unmanageable scale" and with a scale too large for proper management, integration was physically impossible, e.g., 4,500 tenures were issued to different timber interests, (B.C. Ministry of Forests, 1982); 2) difficulty in maintaining continuity and communication between managers on the ground, administrators in Victoria and the different ministries themselves; 3) inability to confirm the value of the land for recreational values against the hard statistics of stumpage fees (an amount of money paid per tree cut determined by the number of stumps upon logging); 4) the implications of vehicular access and association with vandalism, fire and damage or over use to wildlife habitats and industrial operations; 5) finally there was their assumptions of public attitudes to publicly owned land and what public expectations could create.

Managers said that they drew their conclusions from the conventional wisdom that the public had an accepted right in general to the public domain but with specific limitations imposed by the use of land. Acting upon this assumption, they felt the current status was sufficient with regard to the informal use of unsigned vacant Crown land and the policy of not advertising was in the best interest of management. The results of the survey, illustrating the acceptance by respondents of restrictions imposed by commercial activities, substantiated these managerial claims.

Public attitudes were typically summarised by the managers as two contrasting ethics. The first was the "northern", "pioneer" or "this-land-is-mine" ethic (O'Riordan, int. 1984) synonymous with the

transient pioneering, industrial population who asserted rights to the land to the extent of burning gates blocking access to hinterland. The second was the "southern" or "European" ethic, synonymous with the more stable, urbanised population. This latter ethic towards the land embodied conservational values and advocated either "the drawing of fail-safe lines" around areas to guarantee the recreational and conservational values (Marshall, int. 1984) and a wiser management of resources on land under the public's ownership.

In review, the relevance of this identification of two contrasting lobbies was that as bureaucrats they saw their role as arbitrators only when the imbalance was obvious and to do nothing was politically more sound. The drawing of fail-safe lines could be done by the parks authorities and the maintenance of the status quo of recreational tolerance on vacant Crown land was expedient.

The last decade has seen a period of assessment in terms of the manner of controlling access. Information has been distributed through a pamphlet put out to inform the public of *Recreation and the Forest Resource* (B.C. Ministry of Forests, 1982). In the document addressed to the general public three assumptions are presented: 1) the perceived need to control recreational use of land, 2) the impact of the recreationists, 3) the anticipation of increased access and the change in the nature of the use.

All other policy developments regarding recreational use of Crown forest land were under the remit of the Lands, Parks and Housing Ministry (see 7.2.1.4) or under Wildlife Management Area (WMA) designations administered by the Ministry of Environment. These new planning designations were implemented by the Ministry of

Environment to manage wildlife with resource extraction. "Public access, viewing and recreational uses of wildlife will generally be encouraged" (Times-Colonist, 1987, p.C10). Though some of the critical reserves for habitat would prohibit access. This further planning designation has vague policy on recreational access and has been developed primarily for its flexibility with industrial use.

One indirect issue which illustrates the significance of political attitudes towards the accessibility of these lands emerged in 1975. It concerned the alienation of rights of access to land under a law that gave almost absolute powers to a company that set up a recreational village in Whistler. The company could set their own taxation, bye-laws and regulations. The Act was called the Resort Municipality of Whistler Act, 1975, which was a manifestation of the principle to grant security to business interests in Crown land. The following exerpts are taken from parliamentary debates (B.C. Debates. ses.1, July 25, 1979). The parties represented by the speaker are included here (Appendix 2 clarifies the political basis of the parties):

> "We need this [recreational resort] in British Columbia, but no one is going to invest $100 million so that at some time their assets will be diffused by some unthinking people. They have a right to protect their investment." ((Mr. Mussalem, Social Credit M.L.A. for Dewdney Region, p. 1013)

> "I know that this province had a period in history when the Hudson's Bay Company had a system of private law unto itself...I never thought we'd see the day when legislature would take steps to revert to a system of private law in this province."(Mr. Howard, NDP M.L.A. for Skeena Region, p. 1014)

> "Here we see a situation where the government of B.C. is giving away mountains; indeed two mountains. For more than 100 years it has been the assumption of British Columbians in Canada that major recreational facilities - air, water, rivers, beaches - are public property. You can't own a beach. It has been policy of several

governments, Social Credit and New Democrat to make sure that beach access and access to recreational facilities continue to be available to all the people, all the time. This [Whistler Act] is an abrogation of that principle."(Mr. D'arcy, NDP M.L.A. for Rossland-Trail Region, p.1014-1015

"What we deal with here is a difference in philosophy. The people over there [Socred] believe you take Crown resources and give them to private developers...people coming in and looking at the exploitive possibilities of making a great deal of money."(Mr. Levi, NDP M.L.A. for Maillardville-Coquitlam Constituency, p. 1023)

"I talked about..a new world-class recreation village in Whistler; its a monument to all British Columbians - I must add that its because of the dynamic leadership of this government, certainly, that that little 400 million or 500 million project is going ahead. It will be a shining example to all recreational villages anywhere in the world - built right here in little British Columbia."(Mr. Phillips, Minister of Economic Development and Small Business, Social Credit, ses.3, March 18, 1981, p. 4611)

In most issues of this sort, managerial attitudes have been moulded by provincial government policies of rationalisation and privatisation to a greater extent than the day to day constraints of practical management and user's pressures. This to a great extent models the Scottish experience of the Forestry Commission.

7.3.1.7 Summary of accessibility to Crown forestry land

In summary, the mediation of law on the relationship between forestry and outdoor recreation has been ineffectual in clarifying rights of access for the public, except with regard to industrial roads. The historical legacy of multiple tenures and ambiguously defined rights of access has influenced the relationship more by mystifying rights of access through its confusing preoccupation with types of tenure, management licences, planning designations and vague lip services to integration.

The initial preoccupation with roads further polarised the

issue to a debate on linear rights. It follows that the mediation of the law in protecting the recreational resource from perceived threats of the logging industry has been as lukewarm as its commitments to public rights of access. In areas under the CRMP a process exists for integrating recreational use on a spatial and linear basis on lands which have industrial multiple use interests already identified. However, in the primarily forested lands no such mechanism practically exists, and second, the value of this mechanism depends on the relative value of recreation as a best use of land.

The relationship of the use of land for forestry with outdoor recreation is perceived to be problematic both in a philosophical and practical sense, because of 1) the priority of industrial interests, 2) the perceived incompatability of normal logging operations as they exist with outdoor recreation and 3) the variety of the public demands and lobbies which politically are hard to address. Certain recreational interests are pressuring the law to polarise the land uses by formalising rights of access. The recreational lobby is pushing for polarisation to protect the land resource, and demystify rights, including between users, while the industrial lobby is pushing for polarisation to protect their interests in a single use ethic. A mutual lack of trust and confidence by both parties ensures that the single use of land is the only alternative and the grab for land is predicted by the government to go to the highest bidder, either politically with votes or money. Diffusing recreational lobbies to other ministries, or 'passing the buck' has sidestepped the real issue of internal reform of land management and logging practices.

In this very large part of the whole, there are many factors at work to avoid the integration of recreation with forestry. The responsibility of recreation is being ascribed to a single-use status - parks and recreation areas. Meanwhile in other grey areas, access is undergoing an assessment as in the grazing lands of central B.C.

7.3.2 Crown grazing land

> "the Gang [Ranch] was a symbol of everything that was old and good and big about ranching...There were in the Gang 38,000 deeded acres and 100's of 1000's of other acres held by various forms of lease, grazing permits and **strong moral right.** The ranch extended over grasslands, forests and mountains. Taken all together, they made the Gang about a tenth the size of Belgium." (St. Pierre, 1985, p.95)

Crown land under grazing tenure as discussed in Chapter 4, came under a variety of ministries (see Table A2.13 for figures on the relative area of land under grazing). The relationship between ranchers, users and the government was leading to a variety of issues because of growing use of these land and conflicts over access to these lands. Crown mediation of these conflicts was not apparent in the legislation until the late 1970s. Changes before then were concerned with contractual arrangements over leases and licences determining quantity of stock, duration of temporary tenures and ironing out the problems of a dual administration between the Forestry and Lands Ministries.

From 1974 onwards, there was some attempt to address integrated uses of land on certain key lands contained within the Forestry Ministry's portfolio as discussed with reference to forestry under the planning mechanism of the CRMP (see 7.3.1.5).

The balance of grazing land under lease remained with the

Ministry of Lands, Parks and Housing. In 1977, the Pearse Report suggested grazing licences replace the old leases and, thereby, put all grazing lands under the administration of the Forestry Ministry. The reaction from both recreational users and land controllers quickly developed into a lengthy conflict of interest. The following discussion looks at this particular issue in detail.

Case study: grazing lease issue in B.C.

The grazing lease reform during 1983-1984 in B.C. represented an important issue for raising the question of public rights of access to Crown land. It was a critical issue in that it led to legislative reform and open public debate between seeking, controlling and mediating interests, purely over recreational access to a large portion of critical plateau lands in the interior of the province. The heart of the issue was over formalising rights of access through tenured land.

The original Pearse recommendations (Pearse, 1977) were to revise the old tenures that carried with them the exclusive use and enjoyment, comparable to ownership. They were to be reduced to more limited interests in the grazing pasture without necessarily exclusive rights of possession. The implications of this for improving access were only beginning to be recognised by public recreational lobbies.

However, pressures from the ranching lobby quickly stopped the implementation of this recommendation and old grazing leases (involving approximately 250,000 hecatres) were simply replaced upon application for 21 year durations. Due to the strength of the ranching lobby, the leases were ultimately tightened regarding

recreational access.

The replaced grazing leases carried with them amendments that enforced public access stringently to designated areas that had to be identified by public groups, prior to the lease being replaced. In the old leases there had been a very vague reference of access to "existing roads and trails" (Grazing Act, 1919), whereas the new leases had to have trails and roads explicitly drawn on the maps, by public groups, contained with the lease prior to the renewal. The public would have to act as a watch-dog as to when the lease was up for renewal and once the lease was signed it was binding for the following 21 years.

These new policy measures were strongly supported by the ministries responsible because of the potential for formalising agreements. One senior bureaucrat and one manager within the Lands, Parks and Housing Ministry were interviewed (Ahrens, int., 1984; Moffat, int., 1984). They felt that this present system of prior identification of trails would be the best system of arbitration.

> "If people want to recreate on the land then let them come forward and register their trails before the lease is signed. I'm being slightly facetious, but only slightly." (Moffat, int. 1984)

Again, this issue was strongly guided by political judgements of the issue. The Social Credit party in power were criticised for their backing of the revised leases on the basis of supporting single-use, granting security to the lessees and favouring transference of the land into tighter tenures. The opposition argued that the move denied, in a practical sense, public rights of access to what were essentially public lands as is evident in this parliamentary debate by a member of the opposition.

"...it's clearly stated that the Wildlife Act is superceded

> by the Land Act and the Trespass Act, and that the public are now denied access to these vast tracts of the interior of the province, which are portals to the higher elevation Crown lands of this great province." (B.C. Debates, June 24, 1982)
>
> "There is no multi-use concept in that Minister's mind with respect to Crown land whatsoever... The Minister sees Crown land as real estate. He sees it as single-use and single purpose and that is it... The Minister asks me why that situation is unacceptable. It is unacceptable to take public lands, Crown lands, which can be used by a number of users in a responsible way under a co-ordinated management plan - people interested in wildlife attributes, aesthetic attributes, recreational attributes...you take 65,000 acres and grant sovereignity to one specific purpose: single use, growing cows." (B.C. Debates, July 6, 1982)

These arguments were rebutted by the statement from the Minister of Lands, Parks and Housing: "You're against the private ownership of land." (B.C. Debates, July 6, 1982)

Effectively, this change in legislation led to a change in the relationship between outdoor recreation and the use of Crown land for grazing in the eyes of the law. Instead of a vague indeterminate clause allowing access over existing roads and trails which could enable the public to develop a pattern based on an evolving demand, a specific linear access network had to be drawn up, at the agreement of the lessee, that would accommodate recreational patterns over the next twenty-one years. The analogy to this situation is found in the different legal definitions of a right of way in Scotland and England, where the former can exist as any path between two public places and the latter must follow a route determinable on a Ordnance Survey map.

This change led to mounting confrontation between outdoor users and the cattlemen/lessee, with the government being asked to mediate the situation by more clearly defining the nature of public access to Crown land under lease, spatially and linearally. The problems

stemmed from the perceptual differences of what constituted public rights to public lands. The following four letters embody the different arguments of the actors involved in the issue: the first is from the B.C. Cattleman's Association (BCCA), the second from the B.C. Wildlife Federation (BCWF), the third from the Greater Kamloops Outdoor Recreation Council (GKORC), and the fourth, the government minister implementing the policy:

> "The cattle industry stands to suffer when well-intentioned but ignorant and unsophisticated people claim the "right" to use all Crown land for recreational purposes. When they assert such "rights" they reject the authority of government to manage Crown resources on behalf of the public. Government has the responsibility to allocate public resources and to this end has developed the multiple-use concept of management, which has been supported from the outset by the cattle industry. However, the government's mandate includes the ability to allocate some land exclusively for certain purposes as for example the creation of park areas, which are single use for recreation." (Macgregor, letter, 1984)

> "The Cattlemen, Ranchers and Farmers are the most powerful, best organised and well-funded lobby group in British Columbia. I have co-operated with these groups for over twenty-five years through my involvement with Fish and Game Clubs. I do not know of any other group of individuals which are looking entirely and only after their own selfish interests and remain absolutely ignorant and stubborn towards the rights of others." (Roesner, letter, 1984)

> "We have long believed that ease of access to recreational Crown land is our right and, while we are certainly willing to share that land, we are not willing that it be unilaterally taken from us." (Darvin, letter, 1982)

> "Observations:
> We are dealing with what has developed into a complex issue. Resolution need not be a complex and lengthy process if:
> 1) basic understandings and objectives are clear
> 2) emphasis is placed on simplification
> 3) the need to give and take, takes precedence over the defending of "rights"...." (Brummet, letter, 1983)

The BCWF launched a powerful lobby for recreational rights of access. In response, perceived changes in attitudes of ranch owners were identified with traditional tolerance of recreational

use was being dropped in favour of stringent "No Trespassing" signs (Lang, 1982). A decision was made by government to amend the Trespass Act (S.B.C., 1982, c.15, s.15) whereby hunting or fishing on leased lands was permissable. Though the amendment was introduced in 1982, it still had not been proclaimed at the time of research, because of the limitations in favour of the hunting lobby alone and impractical nature of the amendment, whereby hikers and skiiers would have to carry a fishing rod in order to be within their rights.

The issue serves to highlight some of the critical problems of dealing with access issues where the fragmentation of rights and/or constraints of real rights concerning entry to and passage through land raise political and ultimately philosophical questions about the onus of responsibility for places to walk.

Similarly, many of the mechanisms for control of access were evident - grazing interests were most concerned about protecting core lands and upland, so blocking lowland access to these lands became an objective.

In summary, the debate revolved around the desire for controlling interests to keep their interests distinct because of the perceived practical problems of integrating outdoor recreation with grazing cattle (Macgregor, mimeograph, 1984; Brummet, mimeograph, 1983). The physical accessibility of grazing lands is a major factor in the debate. Grazing/range lease lands in B.C. lie in the dry open and partially forested grassland across the southern interior belt. The open lowland rolling hills of bunch grass and open woodlands with river and lake systems give rise to a wealth of wildlife and natural scenery. These lands are spatially accessible,

as there is not the steep terrain and dense vegetation of the west coast forests, so use has expanded and diversified in these lands with wildlife pursuits (active and passive), walking, cross-country skiing, rock hounding, horseback riding, and all-terrain-vehicles.

The relationship between ranchers and recreationists has become more tenuous with the decreasing margin of profit for ranchers from external market factors. Intensification of use had led to increased management of the grasslands and better rotation of cattle through the pastures throughout the seasons. Foot access is viewed as a threat to ranchers during calving times when cattle, unused to walkers, will be disturbed. However, vehicular access is viewed as the greatest threat in terms of the damages done, i.e., damaged grass and fences, gates left open, theft of livestock and the costs that are incurred by these damages. In some ranches, an open door policy is adopted if people seek permission from the manager, in others there is hostility as these two signs illustrate.

> "Tell you what trespasser, if you come inside this fence you'll get yourself a little taste of western justice." (Sign in the Chilcotin plateau with photograph of two men with guns)

> "Howdy! For the next 37 miles you will be passing through some of Canada's finest privately owned grazing lands. Vehicular traffic of any kind over these delicate grasslands is harmful to the ecology of the area and is forbidden without express permission. Thank you for your co-operation. Upper Nicola Indian Band, Chilcotin Cattle Co. Ltd. Douglas Lake Cattle Co. Ltd., Spahomin Cattle Co. Ltd. and Lauder Ranchers Ltd." (Sign in the Nicola Valley)

These arguments were set against the public reactions of being restricted from lands under public ownership, especially those lands with very temporary seasonal tenures. To the public, there is little indication of where leased areas begin, where owned lands end, or what the differences are between a lease and licence in

terms of public rights of access.

The varying relationships of the different lessees with the public, corresponds quite closely with what one witnesses in the Scottish Highlands between landowners and the public - ranging from a philanthropic open door to hostility. The association of vehicular access with recreational access is a critical one and one which appears continuously in the managerial consciousness.

The managerial interviews and the views of the BCCA suggested the strong relationship between the government and the industry but the balance of the public lobby was evident:

> "Cattleman have a privilege, but if there is too much static [over the grazing lease issue], the government will think twice of renewing their lease." (Ahrens, int., 1984)

The outcome of the issue was a proposal drafted by the government in consultation with the two lobbies of cattlemen and recreationists. In essence it was the adoption of multiple use on leased land where the rancher judged acceptable. These lands would be designated Class B. A licence would be granted, no property taxation would be levvied and, consequently, there would be no right of exclusive occupancy, and a right of public access. On lands, judged by the rancher to be critical to his operations and unacceptable as multiple use lands, a Class A lease would be applied, giving him the right of exclusive use and the right to restrict public access. Property taxes and the annual cost of the lease would reflect the virtual ownership and privileges flowing with the lease. The arguments for this system of designation were to prevent vandalism to strategic rangelands and retain single use in these areas. Where no financial commitment to lands was made and government would bear the costs of management and repair, the

concept of multiple use would be tolerated.

Again as part of the whole, grazing lands under lease are tending to be allocated to single use under the principles of security and best use. The historic tradition of vague recognition of public rights to these lands has provided the flexibility for land controllers to exercise tolerance or not depending on the pressures of recreational use. The task of managing recreational use is being rechannelled to the parks system and to a vague and ambiguous multiple use designation under the rancher's discretion. Adapting this case study to the model, what is emerging is a divide in these light grey areas into black and grey.

7.3.3 Crown ecological reserves

When the Ecological Reserves Act was passed in 1971 (R.S.B.C., 1979, c.101) it was the first of its kind in Canada and very quickly 112 reserves were brought into the custodianship of a management team of scientists, and several wardens. The policy from the start was for ecological protection of the reserves and public access was managed by not advertising and wardenship. The relative inaccessibility of many of the reserves ensured the single use of the reserves for conservation. Since the 1980s, policy has changed and the government have reduced the Ecological Reserve Unit to four individuals. There has also been a move towards integrating recreation, transportation and logging on ecological reserves, e.g., parking lots for tourist develoment on Rose Spit Reserve, Queen Charlottes, and proposals to log to the shoreline of Robson Bight Ecological Reserve.

In the summer of 1984, the Ecological Reserves Unit head,

Bristol Foster, who was to be interviewed, resigned. His public statement upon resignation was,

> "They really want bureaucrats - grey, clawless, toothless pussycats - who just do quietly what they are told." (Times-Colonist, 1984, p. 1)

The lobby from interest groups has been from a conservation perspective. Their interests are to maintain the original objectives of the ecological reserves. If public access compromises these objectives then access should be managed or restricted. Crown managers of the land are being pressured by political interests to make these areas more politically palatable. Ecological sites were never envisioned as recreational areas but the recent trend suggests that are being perceived by controlling interests to have some economic potential through tourism as is directly comparable to the Scottish experience. In essence these land units have the potential to be shifted from grey into white areas under the same objectives of the existing park system.

7.3.4 Crown highways

Until the last ten years, the relationship between recreational access and transportation has been a vague concern with improving the scenic quality of highways for recreational car travel, however there has been no recreational provision for travel by foot, bicycle or other non-motorised forms.

Post-war efforts to link resource developments between the interior and the coast resulted in a boom of highway and road construction and statute law and policy were oriented to that end. B.C. provincial authorities retained the responsibility of provincial highways and rural roads, while urban streets and roads

were left in the municipalities' jurisdiction. The latter is discussed in Section 7.2.1.2.

Though highways have retained the archaic definition under common law, i.e., trails and rights of ways, the practical implementation of the Highway Act of 1948 by the Ministry of Highways and Transportation has been the building of roads for motor vehicles. Examples of highway design reflect motorised priorities; mountable curbs for parking cars on pavements; bridge and tunnel design that was not capable of safely accommodating two vehicles and a pedestrian or cyclist.

There has been a recent change in attitude towards outdoor recreation and transportation, reflected in provincial legislation to improve safety standards (Lisman, int. 1984). These standards have granted recreational access of bikes or foot a better margin of safety in the last few years, e.g., bridge widening, white lines and over passes. Despite some advances, an Approving Officer of Vancouver Region, interviewed on his region's practical involvement with recreational provision through rights of way, replied that there was no involvement at all (James, int. 1984).

Factors behind changes in attitudes have been public lobbies of user groups that have emerged in both provincial and municipal contexts lobbying the managing authorities directly.

Though prescriptive means of acquiring rights of access did exist as common law in B.C., prescription was removed by statute under the Land Title Act (R.S.B.C., 1979, c.219, s.24), so like Scotland the integration of recreational use with roads has had to rely on changing attitudes of the Crown and public motorists, who are used to single use of these resources.

7.3.5 Crown power, rail and pipe corridors

Land corridors under the designation of powerlines, pipelines and rail lines have become a great subject of confusion to the public in terms of public rights to these corridors. Various access issues have arisen and the basis of the conflict has typically been in the confusion over rights inherent in these quasi-public lands.

Crown corporations that manage these lands may either purchase corridors of land, along which these cables, pipelines or railways will run, or acquire an interest in them for construction and maintenance. With the former, the land becomes registered as private land under the authority of the Crown corporation, in the latter, the licence is not a licence of occupation and the Crown corporation cannot legally preclude public access, though they may be able to preclude access for safety reasons. These Crown corporations can obtain an interest over Crown land and private land, for which they will pay rent or compensation. The public will have no right of access through this private land in which there is an interest. When an interest passes through Crown land, public rights of access are the same as on Crown land and under the jurisdiction of the managing authority, e.g., Ministry of Forests or Lands, Parks and Housing, etc. As described, the mosaic of rights, tenures and interests is complex and there have many access conflicts throughout the province along these corridors (Farquharson, int. 1984).

The public lobby has been directed mostly at the mediating Ministry of Lands, Parks and Housing to formalise public rights and take on some managerial role of these corridors. Some corridors

have been taken into regional park catchments, some into regional forestry maintenance schedules and others under the Recreation Corridor Policy. In the case of private land owners, fencing and signing are being subsidised by the Crown corporations.

Again these corridors are being formalised to avoid confusion and moved out of grey areas into white (park land) or black areas, but the confusing picture of historical alienation of rights continues to lead to serious conflicts of interest along the corridors.

7.3.6 Summary of accessibility to grey areas

As in the grey areas of Scotland, it is not surprising that users have a vague perception of their accessibility to these lands with the legally complex overlay of tenures, rights in resources and designations that impose restrictions on proprietorial rights and user's rights. The issues that have arisen have been based on conflicts over rights inherent in public ownership, whether the land use is forestry, grazing or utility corridors. As a result of these issues, a well-organised public lobby has developed with demands to make the rules clearer both in terms of the management of the resource and access to it.

Within each ministry responsible for land management, issues have been assessed from both practical and philosophical levels, though working within traditional principles of best and exclusive use with a grant of security. The factors of political philosophies and public attitudes towards the value of access has been critical in the development of many of these issues. A partisan government with contrasting philosophies of landownership and rights of access

to land is the most fundamental basis of conflict.

As a result, controllers of Crown land tend to formalise recreational opportunities within the respective land uses through trails or zoning where economically feasible, and tighten the thin end of the edge by making more stringent regulations of access in order to inhibit informal use elsewhere. Within the conservational land uses of ecological reserves, the value of recreation is seen as a social justification for tying up land in an 'unproductive' land use. The sum effect is to move zones of grey lands into white by formalising opportunities and move the remaining balance of land into deeper shades of grey. One spin-off is the decreasing opportunity for a direct relationship to develop between users and land controllers.

As public pressures increase and access develops to have some separate value from the resource itself, the historic principles are becoming less useful in guiding decisions The cost of access through subsidy of planning designations is being assessed against the price the public are willing to pay to secure it. As in Scotland, assumptions are made about how the public are flexible to proprietorial rights and that they will gravitate to vacant lands and\or signed lands so that managers can successfully gatekeep and signpost.

Within each separate part of the whole, the arguments are consistent: safety, scale, management, security of investment of other interests and limited budgets, but viewed as the sum of the whole, there is a vast extent of land to which there is increasing perceptual and legal constraints on access for recreation in the hinterland.

Some of the questions this discussion raise concern the validity of managers' assumptions: for example are the reasons against integration valid when considered in a wider context; and is the best course of action formalising rights to linear corridors and alienating rights on single use areas.

7.4 Black areas of accessibility

The B.C. sample reached a consensus about the remaining six categories. Less than ten percent of the sample perceived Indian reservations, rural residential land, defence land, farmland with crops or livestock as accessible (see Table 5.13). All these categories except defence land, are lands in private ownership with varying uses of commercial, residential and farming. None of these lands except the defence land, come under any public management or designation. These perceptions conform to the popular interpretation of the trespass law in B.C., which is pervasive, well-understood and defended.

7.4.1 Private residential and arable land

Accessibility to privately owned lands under residential or arable use has created few issues politically or legally. The trespass law continues to be updated and modernised regarding the penalties and criteria by which trespassers can be convicted.

Incidents of simple trespass rarely occur in courts (pers com. Provincial Law Court authorities, 1984). None of the incidents reported in the Access Hotline (Section 5.6.5.2) actually referred to conflicts on private land in general, as opposed to perceived public corridors through private land. The questionnaire survey recorded several incidents of restrictions on riverbanks owned by Indian groups, and restrictions on unfenced farmland by private owners. Conflicts of recreationists and private landowners are isolated and anecdotal on residential properties, farmland, and commercial land. Instead, the majority of incidents occur when access to perceived public territories is closed or blocked off by

private ownership, e.g., shoreline, alpine regions and rivers. Many of these conflicts have been dealt with under the titles of Crown properties or corridors when private land has been mistaken as Crown land.

Private land comprises overall four percent of the total land but has historically been distributed along valley bottom lands and coastal areas, where land was first released for private. Arable land is only one percent of the whole. As a result lobbying pressures have been aimed at access through private properties to public features or land, as well as initiatives within urban trail groups as discussed in Section 7.2.1.2 to enter into agreements with landowners to use land. Evidence of the national and provincial recreation corridor policies suggests some endorsement by the governments. Other provinces with a much higher percentage of rural development have initiated reforms to their trespass acts (Alberta Trails Task Force, 1978; Ontario. Ministry of the Attorney General, 1980; Sanderson, 1982) and pressure groups have identifed these as future role models (ORC, 1983).

There is no historical tradition for private provision of public access or amenity. There are no legal mechanisms for the deferment of tax on private lands that provide recreational or amenity values. This traditional British process is being explored through newly established trusts (Nature Conservancy Trust, Heritage Trust) modelled on British examples. They are an indicator of growing public interest in developing a pluralistic approach to the provision of recreational land.

The only evidence in statute that there was some awareness being raised about public use of private land was in the ill-fated

Recreational Land Act which granted tax subsidy for public free access to private land (discussed in Section 7.2.1.2).

The changing nature of farming as a land use tends to release the land to the industrial and residential sector, so unlike Britain, changes in agricultural policy have little effect on access patterns without a rigid greenbelt policy in effect.

Another factor, is the strong tradition in B.C. of the informal use of private land for recreation belonging to family and friends. Eight percent of British Columbians have holiday homes (Canada. Statistics, 1981e). Also, there is a strong tradition of recreational use of land on a commercial basis, with island resorts, dude ranches and ski resorts providing access to their lands as part of their packages. Access has been one chargeable facility to these lands within the other services.

Finally, there is the factor that these areas have a perceived lower quality in terms of amenity and scenic values. With a strong tradition of enjoying scenic, outdoor recreation, British Columbians are unlikely to view a walk around farm in the same manner as a rural Ontario resident, to whom there is less choice. In a summary report on recreation and tourism in B.C., (Brooks, 1979), B.C. recreation is characterised by the freedom of choice and the non-structured, resource based type of recreation.

7.4.2 Indian reserves

A special relationship has emerged with respect to some Indian territories, especially the land reservations that are not inhabited on a permanent basis. Recreationists and Indian groups have developed a unique relationship of mutual co-operation in tribal

forests that are under threat of land claims. European Canadians interested in the forests for their recreational potential and conservational values are uniting with Indian bands against controlling government authorities because of national claims of land tenure. Moresby Island, Grahame Island, the Nitnat, Meares Island, Stikine Valley and the Stein Valley are six examples of areas where this relationship is evolving. Meares Island is 8,500 hectares alone. These lands are under disputed status but designated unofficially 'Tribal Parks' by the Indian groups. The management policy of the Tribal Parks allows recreational access to non-tribal members, with their own form of management and policing. The following policy was drawn up by the Clayoquot band over the proposed Tribal Park of Meares Island "(2) We would permit access to the Island for recreational purposes - hiking, camping, whale watching, gathering restricted amounts of seafoods and shellfish" (Friends of Clayoquot, 1985, p.15).

7.4.3 Defence land

Within defence land, little has changed in the restrictive policy towards public access. Again recreational pressures have not developed sufficiently enough for users to bring an effect in change in policy to these lands. There has been no initiatives made by the Ministry of Defence with respect to integrating recreational or conservational land uses with defence land uses (Canada. National Defence, 1985).

7.4.4. Summary of accessibility to black areas

There are three important implications of this evolving

relationship between controllers and users within these black areas which are typically close to urban areas. They are the implications to the distribution, the supply and the nature of accessible land.

As the preceeding discussions of this chapter have illustrated, more land is coming out of the grey and white areas into the black, e.g., privatised forestry, alienated Crownland, private grazing land, especially around the settlement areas. If trends continue for more areas for recreation, so more pressures from the public will be placed on these primary lands for recreational access.

As has been the case in Alberta, and eastern Canada, the trend has been for a development in the relationship of users with private landowners, with subsequent responses from the government. This change has been manifest in legislative changes, for example to the trespass acts and occupiers liability acts. There have also been changes in government policies such as the introduction of taxation subsidies for this service to landowners, and the setting up of departments with "enabling" functions.

These provinces have diversified provision through the private and public sector as has developed in Britain. The distribution tends to be centred around settlements and close to the populations, and the nature of the supply is less of single use but integrated through a variety of different managerial styles and tenures. Factors which have contributed to these developments are increasing economic problems to support public acquisition and management.

The luxury of single use may prove to be uneconomically feasible even in B.C. The role of Crown as sole manager may shift to a more pluralistic role with private landowners in order to relieve the Crown of the huge fiscal responsibilities of acquiring

and managing land for recreation. The likely area for this to develop first is in urban settlements where this trend has already showed signs of developing.

7.5 Brief summary of accessibility in B.C.

The overall picture of accessibility in B.C. is that of the tenuous nature of access for recreation in both legislation and contemporary attitudes, deriving from the historical traditions which afforded little value to this relatively new form of land use. The vast majority of land lies in the grey areas of accessibility, as in Scotland, which provides a large degree of flexibility for the economic interests in the land. However, as access as a commodity is rapidly acquiring a value that is marketable and to which the government desires to be accountable to, issues have arisen regarding the respective proprietorial rights in land for management and access. The following concluding chapter expands on the comparisons of issues and factors that have occurred in Scotland and B.C. in this century.

CHAPTER 8

REVIEW AND CONCLUSIONS

8.1 Introduction

There were two objectives in this study. The first, was to examine the concept of accessibility within the context of two case studies, the second was to explore the role of legal principles in influencing the development of access for recreation in Scotland and B.C. By examining and comparing the management of access within the existing structures of land use and tenure, it was hoped to elucidate the issues of how society controls accessibility, what relationships emerge, and what the legal and social mechanisms for controlling access are.

This concluding chapter is divided into two sections: the first section is a comparative review of the case studies and discussion on aspects of accessibility, in light of the stated objectives; the second will critically examine the research, its problems and future avenues.

8.2 Comparative review

8.2.1 General similarities of the case studies

The case studies revealed basic aspects of accessibility common to both areas that emerge whenever people seek entry to land. Boundaries are defined when people seek access, and controlling and/or mediating interests employ mechanisms which facilitate or restrict the entry. In both Scotland and B.C., the variables of the land resource and the mechanisms that have developed to control access derive from the same historic legal principles regarding the

way land is used and perceived, e.g., the ability to defend land from trespassers and the doctrine of estate which enables the fragmentation of rights of property.

Similarly, the way people assess their entry to land is based on the interpretation and understanding of these historic principles, which can vary in scope and depth. On the broadest level, there were similar cultural beliefs about the way land is organised and what freedoms of movement are available to people across the land, though there were subtle and distinct cultural attitudes to aspects of accessibility that characterised access issues in the two regions.

In both regions, it was possible to identify areas where rules were clear about means of entry and areas where rules were not clear. In the areas where rules were clear, it was observed that individuals judged their accessibility through experiential 'rules of thumb', for example, the presence of signs, the name of the designation, the type of land use. These rules of thumb were in part based on personal experiences and in part developed from cultural norms and traditional relationships with landowners and land users. In areas where the rules were less clear, individual characteristics would influence judgement of accessibility, such as personal interpretations of the law, or the degree of risk taking.

In both areas, the basic organisation of land under the principles of common law, associated with Judaeo-Christian ethics, and the implications this has to defending land, moving across land and structuring land uses, have led to a difficult evolution of access for recreation within the structure of other economic land

uses. Much of the problem has been that historically the law and society have been concerned with the control of access for the protection of property. The law has been less concerned with recreational opportunities, except where it concerns proprietorial rights.

8.2.2 Legal principles and their application

Various legal principles have created the patterns of accessibility in both regions. The principles, as discussed below, are the same, but their application has varied depending on the structure of landownership and land use. The principles are introduced first, followed by the differing applications.

The principle of possession and the ability of possessors to prevent trespass has led to the bias towards exclusion in both regions especially in the settled areas. Within the open countryside of Scotland and the open forests of B.C., an apparent tolerance has developed where surveillance would be unfeasible. The control of access in these areas has relied on on other mechanisms available to land controllers.

The doctrines of estate and tenure between them have led to a historical tradition of confusion regarding the way in which access is provided and restricted. The principle whereby land can be fragmented into individual rights has created rights of access as a divisible right of property which the Crown can reserve for public use. However, at the same time restrictions can be placed on proprietorial rights for resources, management, occupation and the prevention of trespass. The combination of divisible rights and constraints has led to complicated multiple tenures and designations

and vague or ambiguous definitions of public rights of access.

The custom of prescription and the development of a 'best use' principle regarding land has negated traditions of rights of access to develop for fear of people claiming possession of land for recreational use. As a result, landholders have the option of maintaining a legal tolerance of public use on extensive properties while the Crown, in both societies, has taken on the paternal role of securing pleasure grounds.

Finally, statute law has emerged in both societies to tighten security of controlling interests, though much more so in the case of B.C. This security has been increased through various means, including legislation regarding trespass and occupier's liability. Similarly, legislation has evolved through the Crown (as mediator) to diversify opportunities for users in the form of obligatory acquisition of land or partial control over amenity or access.

The application of these principles has varied somewhat between the two case studies. The differences in applications have been largely in response to the differing pattern of landownership and land use in the rural and hinterland areas.

Civil remedies of trespass are in similar operation in enclosed and settled land in both Scotland and B.C. However, on extensive properties Scotland has developed a different interpretation of simple trespass, and tolerance has evolved to avoid prescriptive action. This has maintained a degree of flexibility for the private landowners and prevented public control of land. In B.C., the vast proportion of land has been Crown land and a tolerance was also legally observed for travellers who later came to be interpreted as recreational users. Both these tolerances of access have left a

legacy of vagueness regarding public access to landward areas.

The vagueness has been the target for contemporary conflicts of interest in both regions because of the indeterminacy of public rights to and in the land. Central to the argument of the users is the lack of public control over the resource. Controlling interests argue that growing informal use of land for recreation increases the costs to the land manager and takes it out of the region of 'tolerance'. Mediating interests must then adjudicate the onus of responsibility for management and damage.

The response in both regions has been to formalise access through acquisition and designation. Similar patterns have emerged with the development of formal tiered park systems and a packaging of existing informal access opportunities into formal ones. The contrasting patterns of public landownership have led to different approaches with the same legal tools. In Scotland, a more pluralistic system has been encouraged by spreading management across a greater number of bodies and amongst public and private sectors, the Crown acting as an enabling body through funding and subsidy. B.C. has retained a predominantly managerial role by securing absolute ownership and management, though there are trends to diversify both within the private sector.

Scotland has had a historical headstart in litigating access issues in common law and implementing designations with multiple tenures with B.C. only now entering a period of litigation of these issues; both are at different stages of a similar path of legal development. The critical question to the mediating authorities is the cost of maintaining access and the question concerning payment to walk. Managers in both regions have been involved with the

development of multiple use planning desigations and related access issues, for example the regional park issue in Scotland and the grazing lease issues in B.C. In both regions, these issues have led to different actors and politial parties expressing their philosophical and practical concerns towards public access. This raised awareness of the concept of access has enabled a separation of the concept from related concepts like parks or Crown land since ownership is having to be broken up into constituent rights, with access as a right or a constraint. Legal decisions such as these have necessitated an assessment of the real value of access, which has not been straightforward because of the conflicting and often paradoxical attitudes towards it.

8.2.3 Attitudes to and awareness of factors of accessibility

Questions of the value of access have appeared in access issues in both areas. They suggested the similar range of values that people place on land and access to it. Land was observed to have both economic and aesthetic values placed on it, which has had an impact on whether access is perceived as a commodity or a right.

These paradoxical attitudes were observed to be common to both societies, and revealed similar cultural complexities. The factor of 'culture' in this context is being used to describe the deep-rooted perceptions of land and access to it and how society has handled the issues in the past. The great similarities in this range of attitudes towards factors of accessibility amongst the public, the land controllers and the mediators are discussed in the following sections.

8.2.3.1 Public attitudes

The cultural complexities creating such a range of public attitudes towards aspects of accessibility, appeared to derive from similar historical developments. The first was the imposition of Western philosophies on 'aboriginal' cultures with a rich folklore regarding place, nature and the freedoms to it, and the second was the development of a duality in the Judaeo-Christian philosophy itself regarding the dominion and use of land.

Though Western philosphies regarding landownership and land use have largely supplanted both the Indian and Gaelic/Celtic traditions in the last century, access to the land has deep historical relevance with respect to these social changes. As a result there are complex layers of meaning associated with places and access to them. Differing attitudes to factors of accessibility have evolved through the original societies into our contemporary society.

There is a deep association with the land where people have previously inhabited areas and to some people access represents more than simply recreational value, but historical, social and nostalgic value. Access is perceived as a right and any attempts to restrict it are regarded in a historical context, i.e., further attempts to inhibit public use of the Highlands of Scotland, or the Tribal Forests of B.C. In the same vein, formalisation or packaging of access are viewed as restrictions of freedom as was evident in the long-distance footpath issues and regional park issues in Scotland and the national park issues to Indian peoples.

When these attitudes are held together with the conflicting arguments of stewardship of the land versus dominion of the land and

private property versus social responsibility, issues concerning access take on an even more complex nature as people attempt a reconciliation of all their beliefs.

This attempt at reconciliation is evident, for example, in the Pentland Hills Regional Park study or the B.C. grazing lease study where the arguments chiefly concern differing perceptions of rights to the land and strong cultural feelings about the use and ownership of the land.

Linked to these comparisons of attitudes are more fundamental aspects of the public's cognition of accessibility. Cognition has had a large influence on the outcome of the issues in both the regions. First, there is the tendency for most users to avoid conflict and ambiguity. Ideally they want clear rules so that they can perceive the accessibility of an area easily. Second, related to this reliance on clear rules is the perception of access within other concepts like parks and hills, beaches and famous areas. Third, people generally have difficulty in grasping concepts of fragmentation of rights in property which can lead to confusion between, on the one hand, public ownership of land and the ultimate control of amenity and, on the other, simply a public right of access over land and no control of amenity. There is also the potential for confusion when judging which rights supercede other rights in publicly owned land with a variety of tenures and *regalia*.

The result of these cognitive factors is that in both regions a market has evolved for formalised, single use land in which access is packaged as one facility, and amenity of the resource is ensured. In B.C. this has developed through interest groups lobbying for facilities, and land controllers lobbying to government to take on

the responsibility for recreational provision. In Scotland, this has largely evolved from landowning pressures on local authorities to package access in country parks. In a similar vein, attempts at management of access through complex planning mechanisms is problematic. This was evident in the Scottish case study from the low levels of use of the management and access agreements and the regional park designations, and in B.C. from the difficulties with the grazing lease issues, recreational trails in Crown forests, the corridor concepts and the lack of use of other provincial planning designations for recreation.

Central to these cognitive factors is awareness of access itself as a distinct concept. It was evident in both surveys that people have a range of awareness of the concept, and the more awareness, the more influential they are likely to be in the manipulation of their rights and means of access. In B.C. this has led to lobby groups pressuring to conserve areas through maintenance of limited rights like access, and in Scotland, to groups lobbying against formalisation to conserve the wider area through preserving traditional rights.

Given these complex layers of meaning attached to access by the public, issues of access inevitably raise questions of public control of land, stewardship, the role of the free market place and the relative impact on the landowner's tolerance towards public use for recreation. These factors rely to a great extent on the attitudes of the controllers of the land.

8.2.3.2 Land controlling attitudes

Attitudes of land controllers in both regions were observed to

exist on two levels; attitudes based on practical concerns of the impact of access to the land use and philosophical concerns of the relative rights and obligations towards public access. Combinations of these factors produced the variability of attitudes ranging between perceiving public access as an evil to a benefit.

There was a great deal of similarity between the practical needs of land uses common to both regions, such as arable farming or commercial forestry, which have created attitudes towards recreational use, e.g., the incompatability of intensive industrial uses with walking, or the inability of wheels and feet to mix.

Factors that were important to land controllers in both regions were the ability to remain flexible to change and the relationship with other controlling interests. The main method of remaining flexible and reconciling conflicting attitudes with practical concerns has been through the manipulation of the public's perceptions of access. Where there is the potential to exploit the ignorance of legal rights, and to exploit public tendencies to avoid personal conflict, embarrassment and confusion, land controllers and mediators have developed mechanisms to control access. The pressures to retain this flexibility lie also in their perception of what public designation means with relation to public behaviour, e.g., vandalism, no respect of other interests. The concerns of the rancher in B.C. and the hill farmer in Scotland were similar regarding the implications for labelling land with a designation that carries with it the assumption of public access.

The mechanisms that have developed both enable access and restrict it. The use of signs, walls, fences, vegetation, evidence of occupation, parking areas, the attractiveness of the area, gates,

stiles, and honeypots are used in both B.C. and Scotland to control access (see Table 8.1). The success of the restrictive mechanisms was observed to lie in the public observance of proprietorial rights, and respect of privacy, livelihood, and property, often belying the actual legal structure of the land.

Table 8.1 Mechanisms for Controlling or Directing Public Access

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1) restrictions of access by natural obstacles;

2) lack of restriction because of no natural obstacles;

3) restriction of access through exercising legal rights verbally or by erecting signs and barriers;

4) provision of access through lack of legal rights to enforce;

5) control of access through an entitlement to charge;

6) provision of access through legal obligation, e.g., pleasure grounds, trusts;

7) control of access through a system of allocation that hides part of the land or creates competing attractions;

8) restriction of access through deliberate maintenance of physical inaccessibility or erection of obstacles;

9) inhibiting access by reducing attractability of resource through type of land use;

10) inhibiting access by maintaining ambiguity of legal rights;

11) provision of access despite any legal obligation through enhancing attractiveness of area or removing obstacles.

8.2.3.3 Mediating attitudes

The varying attitudes and practical constraints of land controllers and users have made the mediating function of the different governments problematic. On the first level, the Crown in both cases is having to determine the nature of access as a right or a commodity that can be supplied by the private sector. Rather like museums and libraries, access is currently coming under fiscal evaluations.

In addition to varying attitudes of the principle actors, and differing political philosophies about State provision of access, the following factors are part of the framework in which these questions are answered: existing historical base of access (for instance, rights of way, foreshore, highways); the priority of access within other social obligations; the legal obligation to avoid upsetting commercial private sector provision; the desire to avoid competition with *de facto* access; the problems of reconciling recreation and conservation; the avoidance of legally binding and fiscal problems of management. Further problems emerge for mediators when political parties and their policies change.

These practical constraints have led in both regions to a similar range of meaning to the nature of access: access takes on spatial and temporal dimensions when people try to manage it; it has legal and common terms; it can exist as the resource, i.e., a nature trail, or the means to an end, i.e. access to a perceived public feature like a mountain top or a river; the type of access varies with the type of recreational activity, e.g., bridle paths and footpaths; finally, the type of access is characterised by the priority of recreation amongst the land uses that share a land area.

Given these similarities in which access has come to be viewed in both a practical and philosophical sense by managers, the nature of the response to change has been similar in both regions.

Both regions have experienced great land use changes during the post-war period. In Scotland this has represented, agricultural improvements and urbanisation and, latterly, the afforestation of the higher grasslands. In B.C. this has represented urbanisation and expansion of the forestry and resource industries. Patterns of access have been altered by these changes in land use and responses by both regions have been to formalise access and amenity through parks close to urban centres.

There has been an strong element of non-decision making by retaining weak legislation and maintaining the flexibility of use in the hinterland where controlling interests have a stronger lobby. Predictably, these grey areas have experienced the same types of conflict and issues, while redundant urban uses have passed into grey areas of debate. These changes in land use are equally as influential to accessibility in both regions. For instance, the growth of private forestry in Scotland poses exactly the same threats to *de facto* use as the movement of logging into established forests in B.C. Crown land and parks.

The growth of cities has created the same urban fringe problems at the interface of agriculture and settlement, where trespass will be interpreted as damage to arable and livestock lowland farming in both legal systems. The need for open space close to urban centres has caused similar relationships to emerge between seeking, controlling and mediating groups over access through different tenured land, redundant land and corridors.

The movement of these grey areas into black and white in both regions represents the dynamism of the relationship. But with change, the same questions have emerged about the provision of space by securing access through constraints on private landownership. The basis of these philosphical questions are the same in both regions whether it is a Scots arguing for the freeedom to roam or a Canadian arguing for the right to public land.

Given the vast differences in population to land mass, the similarities in issues and attitudes are surprising. On a geographical basis there is a similarity of distribution of population (see Map A2.1 and A2.2) and recreational opportunities, with the population bound by similar constraints of distance and physical inaccessibility to the land resource. The southern mainland of B.C. parallels the central lowlands of Scotland in many aspects, especially when the relative incomes and mobility are adjusted to take into account the greater levels of use per capita in B.C. However, in the following respects accessibility has differed markedly between the two regions, regarding the evolution, issues and management of access.

8.2.4 General contrasts of accessibility

The first contrast is a historical and economic one. B.C. has had a rapid pioneering development versus the much longer established Scottish agrarian tradition. The stability of agrarian land use has enabled traditional territory and tolerance to develop, this has had a greater influence on accessibility than the fact of public ownership in B.C. The nature of the strong tenures and alienation of rights inherent in Crown land of B.C. has created more

change and loss of control of the resource and amenity of the countryside than the fact of private ownership in the Highlands.

The relative scales of the land resource and the polarisation between the primary resource industries and settlement are critical factors influencing the different broad patterns of accessibility. This is most apparent in the hinterland/countryside contrast where resource-based recreational users come into contact with the resource-based land users of the hinterland. A valid comparison between the Highland countryside and B.C.'s hinterland is difficult to make even with an adjustment in scale. There is such a diversity in the ecological zones of B.C. that land uses are not as homogenous as the Highland land uses. Portions of B.C. would compare favourably with the Highlands, e.g, unenclosed grazing land, while the large scale forestry tracts and mountainous country have no equivalent, however in these latter regions access is so physically difficult that recreational use is rarely made. Because of the differing scales there are different levels of surveillance from controlling interests, whether lease holders or owners.

In Scotland, the countryside is under more surveillance being a manageable scale in proportion to population, and a relationship has developed between seekers and controllers that is direct, personal and obtrusive. In B.C. the relationship between seekers to these areas and controlling interests are never established on a visible, personal basis. Instead of seekers and controllers in B.C. addressing problems to each other in the forest where activities take place, problems are usually directed to the Crown as mediator to be resolved in the courtroom.

Scale has had the other general effect of reinforcing a single

use tradition within the mind set of the B.C. public. Traditionally, all three groups in B.C. have had the luxury to resolve any conflict by enclaving land uses and maintaining 'enclave perspectives' as there was usually enough land that the practices of each did not affect the other. Examining the processes by which these groups resolve problems, the trend has typically been to formalise opportunities through legislation and designation into management concepts like parks, where access and amenity are assured, and recreational use is reduced outside of these parks. Single use then leaves controlling interests free of any involvement.

Conversely in Scotland, the processes by which the three groups resolve problems has been through a very restrained and reluctant use of legislation and designation, relying on an evolving dialogue between controlling interests and users to balance the respective demands on a limited resource base, but more importantly to retain flexibility for the landowning interests within a limited resource. This has led to the development of a national body in Scotland, the Countryside Commission for Scotland, that provides the research and grants-in-aid to try to balance countryside amenity and recreation with other interests. B.C. has simply developed management agencies for publicly owned parks through varying levels of government.

Within areas of settlement and intensively used valley and estuary land, the factor of scale has less relevance. Recreational trends in both Scotland and B.C. indicate that maximum pressures are experienced within the urban fabric. The density of settlement has caused similar patterns and processes to evolve that accommodate changing patterns of recreational use within the structure of residential and commercial development. Historical artifacts like

pedestrian rights of way within the cities of Scotland have created an additional resource for recreational access.

There is a difference in socio-economic standing of the Scottish people to the British Columbians (see Table A2.23-24). A relatively larger increase in B.C. living standards from the 1960s to the late 1970s was reflected in the much greater mobility of the population to get to places for recreation. This has led to a greater diversification in recreational pursuits, especially motorised ones (see Table A2.25).

Motorised recreational access has been critical to general access issues in B.C., as increased pedestrian access to land always carries with it the possibility of increased motorised access. Traditionally, motorised recreation access is associated with greater threats of damage, theft and vandalism. These kinds of complications of diversified pursuits and motorised pursuits have not been so widely experienced in Scotland and the issues have remained less complicated.

Another major contrast between the B.C. and Scottish case studies is the traditional role of private trusts in the last century taking on private ownership of land but making access a free facility in areas where it is non-capital intensive and taxation subsidy has been granted. Though this form of Crown subsidy could be said to be comparable to national parks in B.C., the management lies in different private hands and there is a diversification of the managerial interests. It is this factor that makes political ideology relevant to some issues in Scotland but critical to all issues in B.C.

8.2.5 Summary of comparative review

In conclusion, the two case studies revealed important aspects of accessibility. First, the relationship that evolves when people seek access to land for recreation is complex and touches on important philosphical, cultural and legal principles. These principles have an historical continuity and, therefore, the issues that evolve have an important historical context which is easily overlooked on the basis that recreation is seen as a modern land use. Recreational access has evolved largely through the development of proprietorial rights. Because of this historical basis, access issues are complicated by the interests involved failing to place issues in this context.

Despite Scotland and B.C. having such widely differing patterns of landownership, with B.C. predominantly in public ownership and Scotland in private, the issues and management problems of the land are similar. The priority of individual possessory rights to ensure the 'best and appropriate use' of land over recreation, has given recreational use a difficult and tenuous development regardless of the proprietor. Critical to accessibility in both regions has been the intensity of the land use (including recreation) and the dynamic nature of economic land uses. With changes to the land use, the relationship between users, land controllers and mediators changes. Access issues inevitably occur with these changes.

8.3 Critical review and avenues of future research

In attempting an explorative study, a great number of questions have been raised about aspects of recreational accessibility. The

main problem of this research has been to pursue a central line of enquiry as there are so many avenues of research that the concept of accessibility opens up. However, in raising some of these questions within this broad framework, various other areas of research can now be identified in related legal, political, historical, socio-anthropological and psychological fields.

One avenue of research which would be useful is further cognitive work on public interpretations of law concerned with access. A historical avenue of research could examine in greater depth the impact and origins of Judaeo-Christian beliefs and mythology on access across land and concepts of free movement and trespass. Socio-anthropological research could be developed on cultural attitudes towards access across land for pleasure, stemming from behavioural research on territory, social space, etc. Legal research on differing legal systems and their influence on accessibility would be useful with respect to finding new models for resolving issues. Examining access from the perspective of a political scientist or economist might provide some explanatory models developed for the social distribution of other 'resources', e.g., a Marxist model. Aspects of landscape analysis might provide clues as to the role of visual indications of access like signs and barriers. Linguistic research and research into semantics of place names and generic names that indicate the accessibility of an area could examine the critical role of language in influencing our perception of access and our understanding of the issues.

A comparison of perceptions of the land and freedom of movement in it could have constituted a full study on its own. More research of these cultural aspects of access and how they are reinforced in

literature, art, the media, etc. could have been related to the legal development and evolution of issues.

With reference to recreation research, this study has attempted to examine many of the phenomena of accessibility, like footpaths, long-distance trails, parks and foreshore in a broad context which has advantages and disadvantages. The objectives were to look beyond traditional problems, for example, pressures of use in parks which dominate recreational research in B.C., and the advantages were that this was possible within the framework developed.

The framework leads one away from a narrow perspective of confining entry and approach of land to formalised facilities and single use to a consideration of access to all types of land and a way of visualising integration. This has led to the opportunity to look at hidden sources of recreational land within the grey areas. It has also allowed for an examination of the manipulation of space by specific groups or the constraints on use because of perceptions of users themselves. In this sense, this perspective parallels the development of ecological philosophies with regard to conservation and the growing awareness of methods in which conservation of land can be integrated throughout the land resource.

The disadvantages have been in maintaining some limits on the research, since few constraints through time or geographically are set by the topic. There are also disadvantages in trying to address individual issues in some depth.

The main value, as an exploratory study, is seen in establishing some basic working understandings and terminology of the issues. There is the potential to increase understanding of access issues because it separates the concept of access from other

related concepts. Since many of the issues over access concern protection of the resource or proprietorial rights, if these conceptual differences are made clear then the basis of discussion is better defined. First, people will be able to separate the practical arguments from the philosophical arguments and, therefore, identify non-decision making on the difficult issues of rights versus privileges of access. Second, there will be a better awareness of the mechanisms by which access is controlled in society.

The comparative study has identified common circumstances that have some bearing on the relationship that emerges when people seek access to land. The biases deriving from a particular region and preconceived ideas of that region are more easily and objectively viewed in light of different manifestations of the same factors in the other region.

Furthermore, since the concepts were new, factors of accessibility were difficult to identify in isolation and could well have been missed, but for the fact that certain factors occurred in one region raised questions as to why they did not occur in the other, for instance, Crown subsidy of private land for public access or tolerance of trespass on private land.

Most importantly, the comparative research has identified the critical importance of the doctrines of land organisation and use in making the development of recreational use problematic within the pattern of other economic land uses, regardless of the factors of scale and differing patterns of landownership.

The use of the black, white and grey model has provided a way of seeing how changes in factors of land use, the law or attitudes

can influence the total supply of land for recreation. Because the relationships are complex, the model provides a more simple way of visualising change and points of friction. Land areas moving in or out of these cognitive categories create the dynamic aspects of accessibility. It allows a perspective on both single use and integrated land use policies, in a practical and philosphical sense. In the practical sense, the model enables a consideration of physical supply of land for recreational use and demand. In the philosophical sense, it enables an investigation of the value of the right to move across the land for recreation.

APPENDIX 1

QUESTIONNAIRES

The Scottish and B.C. questionnaires are contained in cover pockets.

APPENDIX 2

STATISTICAL COMPARISON AND SUMMARY

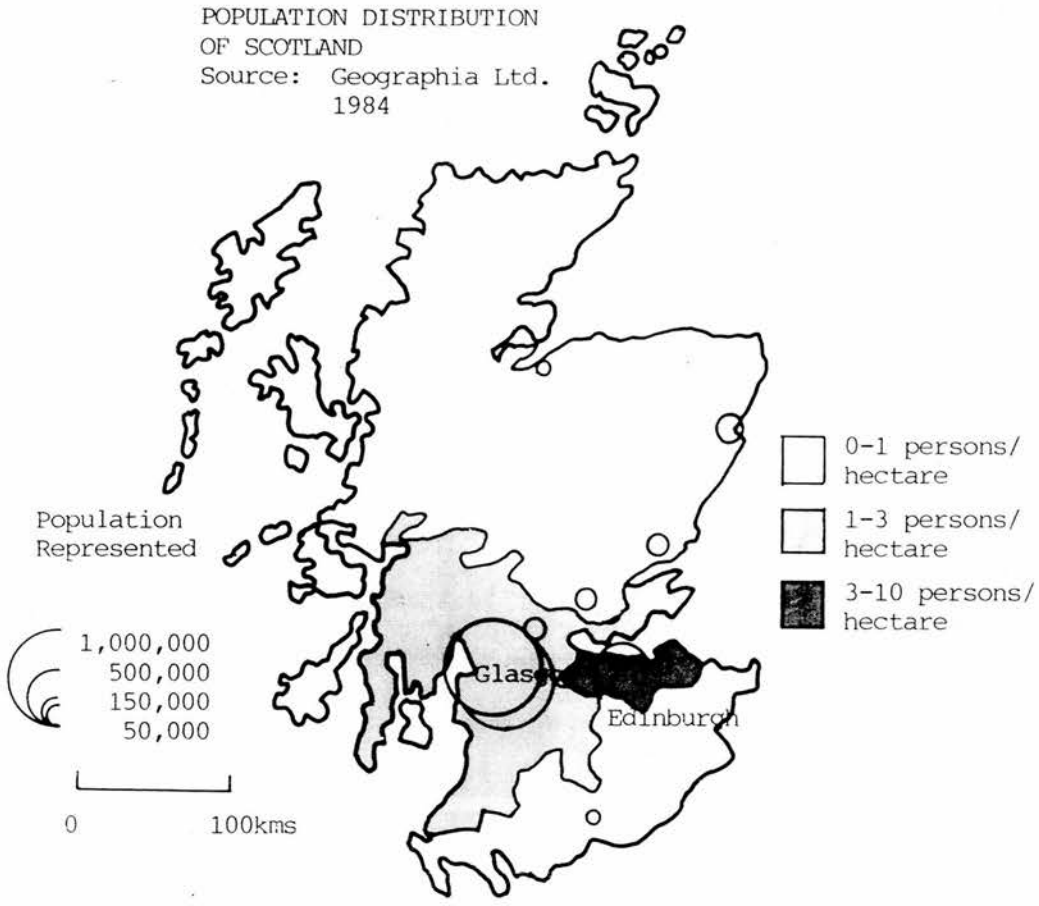
A2.1 Geographical summary: land use, landownership and population

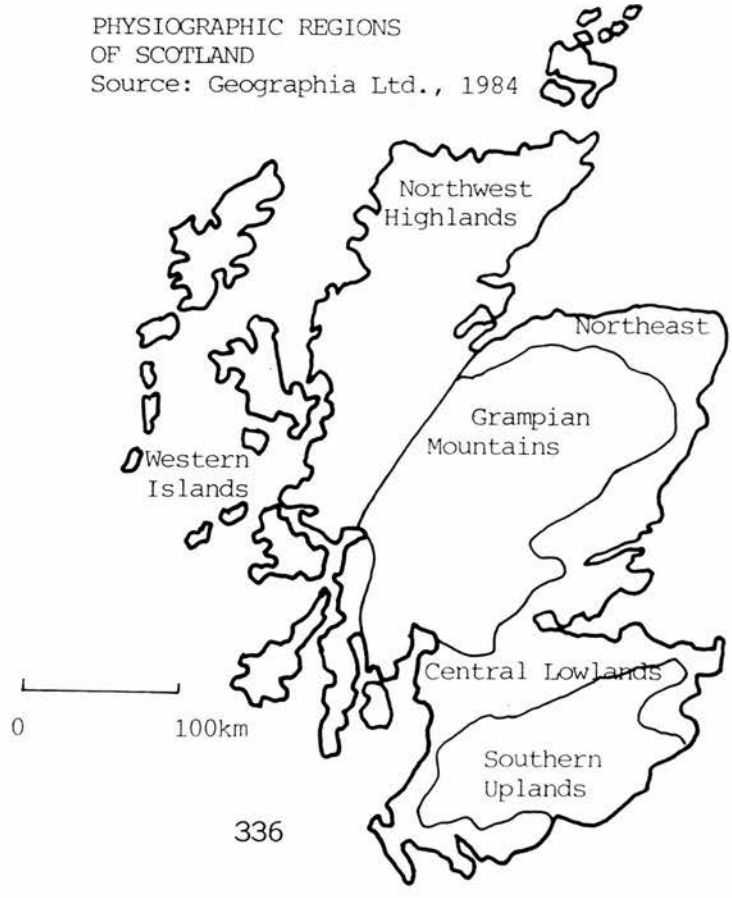
This summary is provided as a very brief overview of statistical information on land areas, population and governmental systems that influence accessibility within these two regions. It provides a geographical context for the two case studies. In view of the research touching on land uses of a recreational, conservational, economic, and residential nature, as well as the legal and social infrastructure of land organisation and tenure, virtually all geographic factors have some relevance to accessibility. Since many of the more critical factors are raised in the case studies, the discussion is restricted to the very broadest physical and socio-economic factors.

B.C. has half the population of Scotland (Tables A2.14 and 15) and eight times the total land area (Tables A2.1 and 8), but despite this apparent contrast of population and land size, the population distribution of the two regions is broadly comparable, with over half of the population in both regions centred around the two largest cities and most of the remaining population concentrated in a lowland southern belt (Maps A2.1 and 2). The total area of arable and urban land is almost the same in the two regions at approximately six million hectares (see Tables A2.2 and 9).

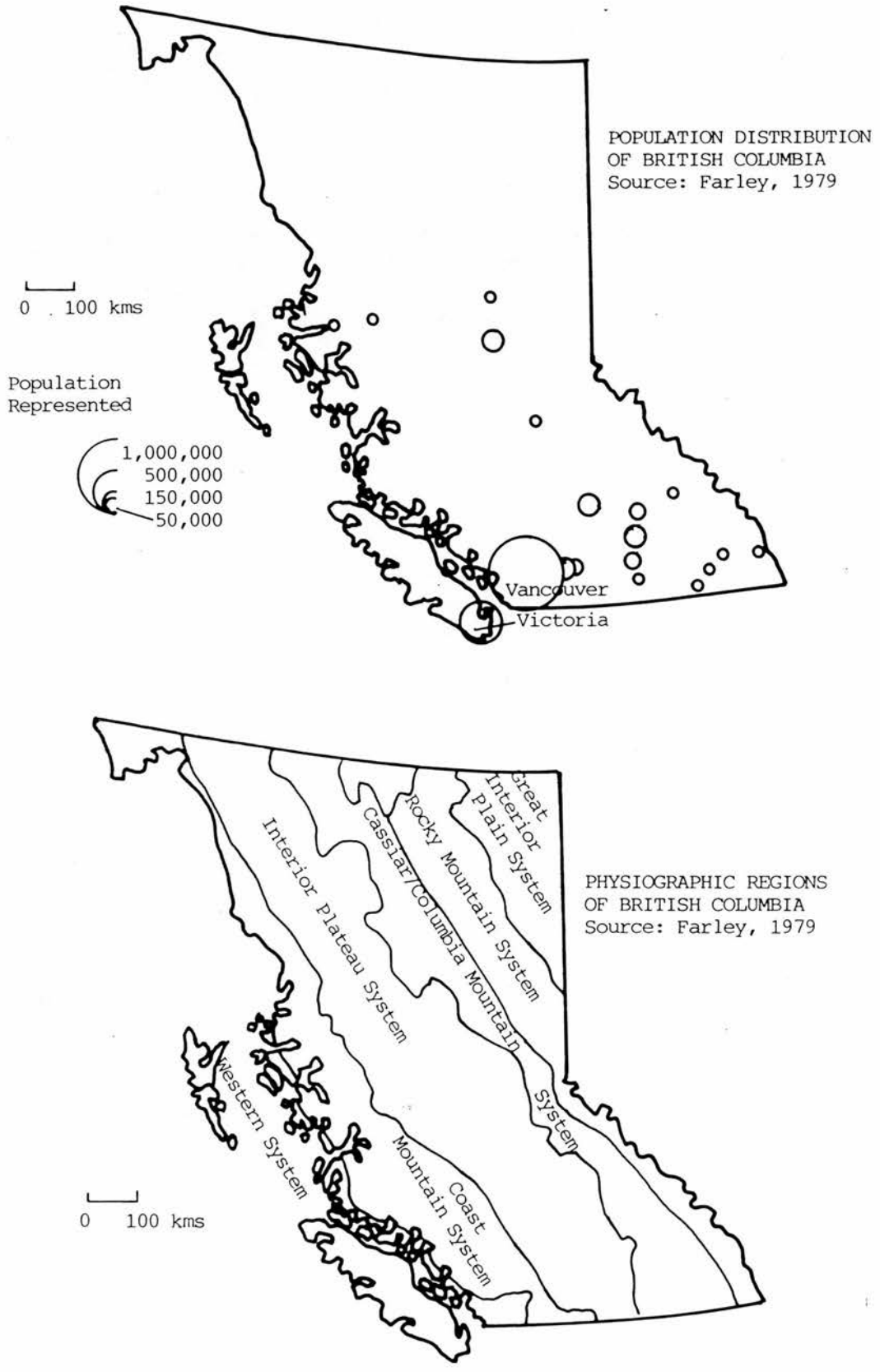
The following maps show the respective land area, population density and distribution and physiographic regions of the Scotland and B.C. (Maps A2.1 and 2).

Map A2.1 Scotland: population density and physiographic regions





Map A2.2 B.C.: population density and physiographic regions

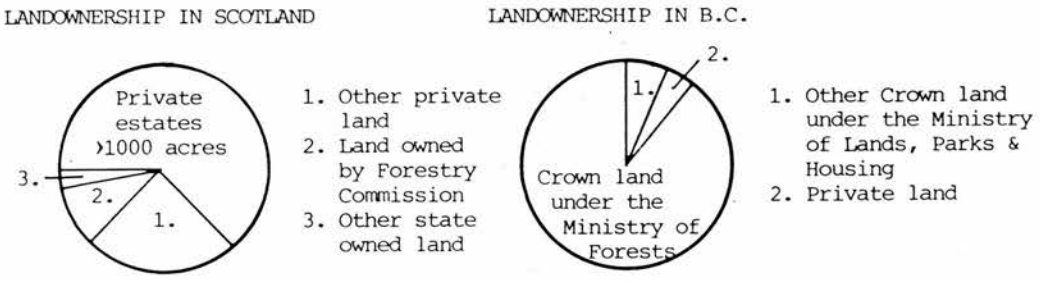


The two regions are vastly different in terms of physiographic diversification and land use, however, there are strong similarities between the regions with respect to the legal and institutional infrastructure, the Judaeo-Christian background and the socio-economic status of the people; B.C. having a predominantly British immigrant population from this century. British Columbians have a generally higher standard of living, with corresponding higher levels of education, home ownership and car ownership and lower levels of unemployment, though local variation in both regions might appear similar (Table A2.17 and 18). The most marked difference is the predominantly agricultural economic base in Scotland (Table A2.3) outside of the settlements as opposed to the forestry and mining resource base of B.C. (Table A2.11) throughout the relatively vast hinterland. In this sense, the towns are much more polarised from the hinterland in B.C. than the countryside is from the towns in Scotland. However, the heartland/hinterland relationship in both is characterised by broadly similar issues and conflicts over control and access.

Figure A2.1 (also represented numerically in Tables A2.7 and A2.10) illustrates the great contrast in the pattern of tenure and landownership. In B.C. 96% of the land is in public ownership, of which 5% is under some sort of protection (Table A2.12). Comparatively, Scotland has under 13% in public ownership. Of the total land, in both private and public, over 10% is under some form of protection (A2.5). There is greater diversity of responsibility for land management in Scotland than in B.C. where the vast proportion of land is under the management of the Ministry of Forests in B.C. (A2.11). This has led to a great number of the

access issues evolving under just this one Ministry's jurisdiction (Figure A2.5). The following tables provide a statistical summary of land area, land use, tenure, and population.

Figure A2.1 Comparison of landownership in Scotland and B.C.



Source: McEwan, 1981

Source: Ministry of Forests, 1981

Table A2.1 Land area in Scotland (hectares)

Land Area	7,877,000 hectares
Land over 185 metres	3,900,000 hectares
Land over 460 metres	1,100,000 hectares
Length of mainland coast	3,910 kilometres
Islands	790 (664 of which are uninhabited)

Source: Scottish Information Office, 1984

Table A2.2 Land use in Scotland (hectares)

Agriculture	6,370,000
Productive forest	857,000
Inland water	157,000
Other (urban, ungrazed, roads and woodlands)	493,000
TOTAL	7,877,000

Source: Scottish Information Office, 1984

Table A2.3 Agricultural land in Scotland (hectares)

Arable A-C	1,187,000
Permanent Grass	563,000
Rough Grazings	4,620,000
TOTAL	6,370,000

Source: Scottish Information Office, 1984

Table A2.4 Forestry land in Scotland (hectares)

Existing private woodland	41,900
Existing Forestry Commission woodland	521,000
Additional replanting by Forestry commission	10,100
Additional private planting	10,700

Source: Scottish Information Office, 1985

Table A2.5 Land conservation and recreation in Scotland (hectares)

National Nature Reserves	94,224[1]
SSSI Grade 1 and 2	390,037
Other SSSI	182,321
National Scenic Areas	100,200
Greenbelts	130,000[2]
National Trust for Scotland properties	40,470[3]
National Trust for Scotland conservation agreements	22,483[4]
Forest Parks	104,000[5]
Country and regional parks	30,000

1 Source: Scottish Information Office, 1984
2 Source: National Trust for Scotland, 1987a
3 Source: National Trust for Scotland, 1987b
4 Source: Countryside Commission for Scotland, 1987a
5 Estimated from various sources

Table A2.6 Coastline conservation in Scotland (kilometres)

Coastal Conservation Zones	3,040
Coastline in National Scenic Areas	995
Coastline in NNR or SSSI	1,085
National Trust ownership	155
Coastline protected through Conservation Agreeements	125

Source: Scottish Information Office, 1984

Table A2.7 Land tenure in Scotland (hectares)

Private (in round figures)	
In Estates down to 400 hectares	4,865,400
In Estates under 400 hectares	1,821,150
TOTAL	6,686,550
State Owned	
Forestry Commission	767,108
Department of Agriculture	180,415
British Rail	18,211
National coal Board	19,830
Defence	19,790
TOTAL	1,005,354

Source: McEwan, 1977

Table A2.8 Land area in B.C. (hectares)

Land Area	94,859,600[1]
Land over 600 metres	90.000.000
Length of mainland coast	12,150 kilometres[2]
Number of islands	6,500

[1] Source: Hryciuk, 1986
[2] Source: Farley, 1979

Table A2.9 Land use in B.C. (hectares)

Forest Land	50,600,000
Water and Wetland	2,500,000
Non-productive land(alpine, rock, scrub)	35,600,000*
Arable and Grazing Land	4,700,000
Urban	600,000
Parks	4,500,000

*Land described as grazing land is also described as forestry land and therefore the agricultural figures below (Table A2.13) will not correspond to these figures.

Source: B.C. Ministry of Forests, 1975

Table A2.10 Land tenure in B.C. (hectares)

Federal Crown land	90,400
National parks	469,000
Indian Reserves	339,000
Private land	5,504,000
Provincial Crown land	53,928,000
Provincial parks	4,162,900
Provincial forests	30,366,300
TOTAL	94,859,600

Source: Hryciuk, 1986

Table A2.11 Forestry in B.C. (hectares)

Crown Provincial land	49,010,000
Crown Federal land	444,100
Private	2,649,000
TOTAL	52,104,300

Source: B.C. Ministry of Forests, 1982

Table A2.12 Land conservation and recreation in B.C. (hectares)

Ecological Reserves (land and water)	150,975[1]
Ecological Reserves (land only)	100,943[1]
Regional Parks (figures not available)	
Wilderness Conservancies	131,000[2]
Nature Conservancy Areas	300,000[2]
Provincial Parks	4,644,800[3]
Provincial Recreation Areas	100,000[2]
National Parks	469,000[3]

[1] Source: B.C. Ministry of Lands, Parks and Housing, 1983
[2] Source: Wilderness Advisory Committee, 1986
[3] Source: B.C. Ministry of Lands, Parks and Housing, 1986

Table A2.13 Agriculture in B.C. (hectares)

Arable High Capability	500,000[1]
Arable land Total	2,300,000[1]
Land under grazing leases	190,000[2]
Land under gazing licences and permits	10,000,000[3]
Land under CRMP	5,000,000*

*Land under CRMP may include some land under grazing leases, licences and permits. Land under grazing licences and permits is administered by the forestry ministry and is, therefore, also described as Crown forest land.

1 Source: B.C. Ministry of Agriculture, 1977
2 Source: Brummet, mimeograph, 1984
3 Source: Chabot, letter, 1982

Table A2.14 Population in Scotland

TOTAL	5,159,000
Glasgow	730,000
Edinburgh	444,741
Average Density	66 persons/km^2
Density in Clydeside Conurbation	1008 persons/km^2

Source: Whittaker, 1983

Table A2.15 Population in B.C.

TOTAL	2,744,467
Vancouver	1,268,183
Victoria	233,481
Average Density	3.4 persons/km^2
Density in Greater Vancouver Conurbation	935 persons/km^2

Source: Canada. Statistics, 1981a

A2.2 Planning and political structures in B.C. and Scotland

In terms of political and governmental systems, the two regions are also broadly comparable. The main contrast is that B.C. has an autonomous legislative assembly so controls land directly and enacts legislation (Figure A2.4 and 5). However, the troubled relationship between the federal government and the province is still evident despite this autonomy and parallels, in some respects, the balkanisation of Scotland and the central government of Great Britain.

The structure of ministries is similar, with the responsibilities of the ministries reflecting the important socio-economic aspects of the regions (Figure A2.4 and 5). 'Quangos' or 'quasi-autonomous non-governmental organisations' linked to ministries in Scotland, have no parallel with respect to countryside or conservation matters in B.C., though the Outdoor Recreation Council is grant-aided by the provincial government and though is not a grant-aiding body itself, as is the Countryside Commission for Scotland, it has a partly consultative role to the public. This discussion with regard to recreational planning mechanism is developed in the following section (A2.3).

Finally, with reference to the political system, whether on a local, regional, provincial or national scale, parliaments or councils are composed of elected members from a typically two party partisan field. B.C. has national, provincial, regional and municipal levels of government. Scotland has national, regional and district levels of government. Legislative debate in both regions centres around the tension between the left and right

interpretations of public and private responsibilities and expenditure.

In B.C., the dominant right wing party has been the Social Credit, with varying parties over the years providing the more liberal to socialist viewpoint. The New Democrat Party have provided the strongest opposition since gaining office between 1972 and 1975. In Scotland, party politics have moved generally between the Conservative and the Labour party.

A2.3 Recreational use and planning trends

Trends in recreational use in B.C. and Scotland are roughly comparable and reflect the relative growth in prosperity and mobility of the population from the post-war period onwards. Funding and growth in the recreational sector peaked in the 1970s with the gradual reduction and rationalisation of public spending in the 1980s to match a levelling off of use, particularily in Canada. Brief thumbnail sketches of use patterns and trends provide some base comparisons for the study.

General outdoor recreational use has increased in both regions over the last thirty years. This is evident from various indices represented below for Scotland in Table A2.16 and Figure A2.2.

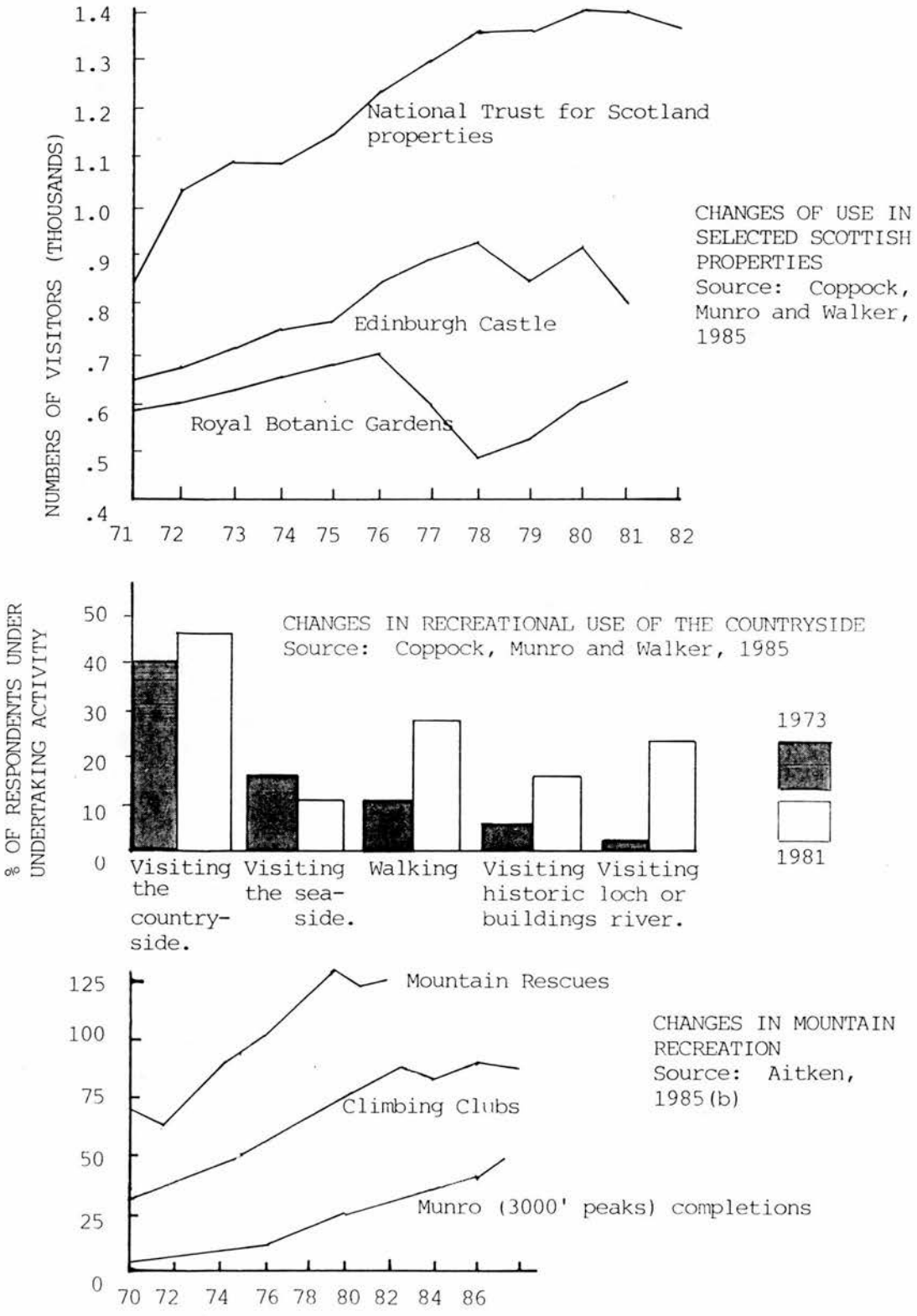
Table A2.16 Growth in membership of outdoor clubs in Scotland 1950-1980

CLUB	1950	1960	1970	1980
RSPB	6827	10,579	65,577	272,000[1]
SYHA	37,089	37,202	39,201	43,665[2]
RA	8,778	11,300	22,178	40,000[2]
BFO	-	-	1,600	4,959[3]
SNT	3.000	21,235	36,722	104,978[3]

RSPB refers to the Royal Society for the Protection of Birds
SYHA refers to the Scottish Youth Hostel Association
RA refers to the Ramblers Association
BOF refers to the British Orienteering Federation
SNT refers to the Scottish National Trust

Source: [1] Basset, 1986
[2] Holt, 1985
[3] National Trust for Scotland, 1981
All others from (CRRAG, 1979)

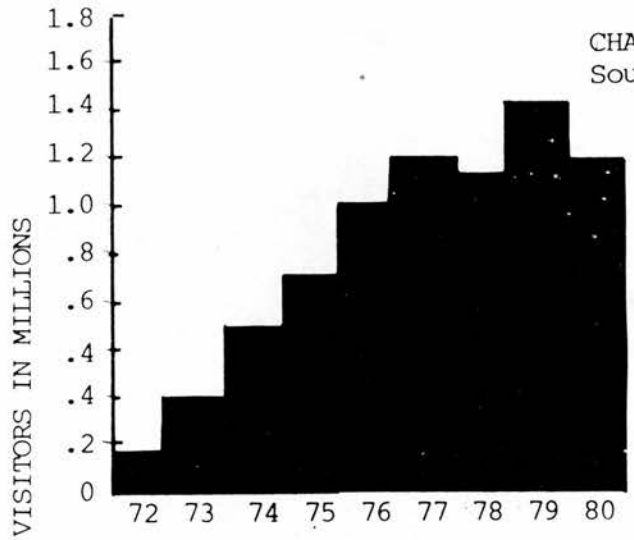
Figure A2.2 Indices of growth in outdoor recreation in Scotland 1970-1982

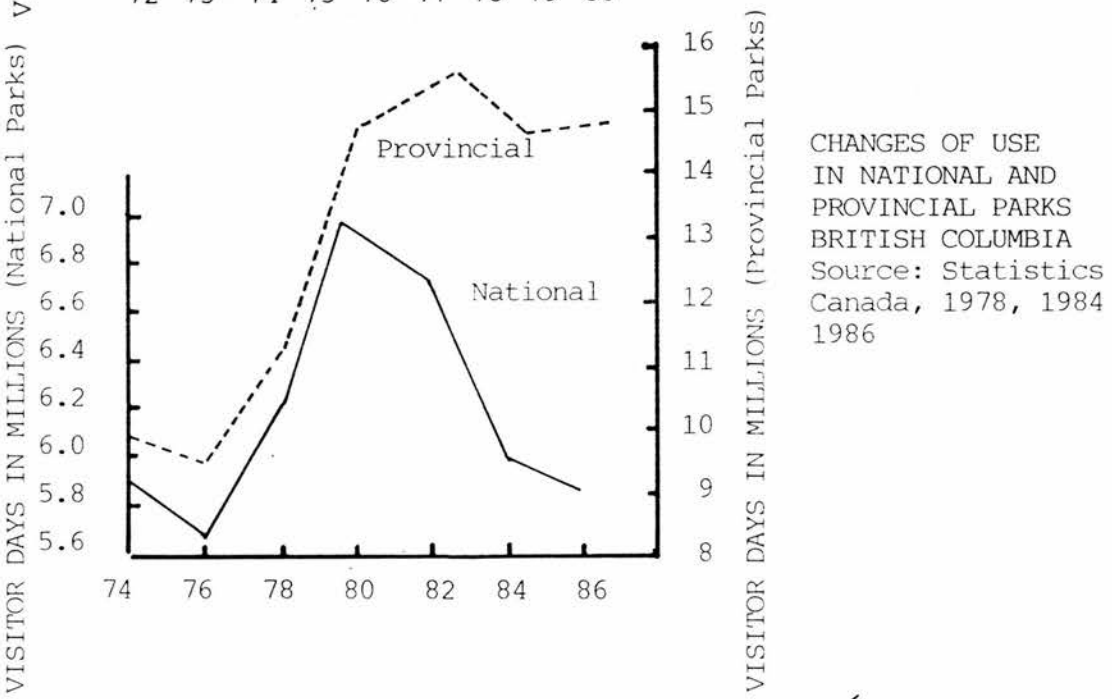


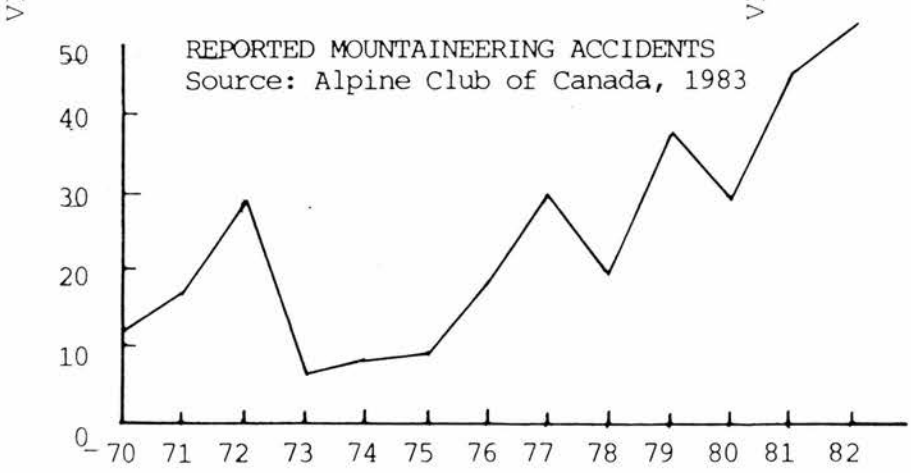
The Scottish Leisure Survey Reports produced by the Countryside Commission for Scotland indicate that going to the countryside is the most popular way of spending leisure time out of doors in Scotland (CCS, 1985b). Seventy percent of the population had spent at least part of a day in countryside in the last year and walking is the most popular activity with 36% of all people having gone for a walk in the countryside of at least two miles in the previous year.

In B.C., the statistical digests of recreational trends (Canada. Statistics, 1984 and 1986) indicate that 62% of the population walk for recreation. while the Provincial Park Survey Technical Report (Jeroski and Conry, 1983) indicated that recreation was very important to the majority of British Columbians and that 90% of the respondents had visited a provincial park at least once, 60% of them in the last twelve months. Figure A2.4 examines further indices of growth in use.

Figure A2.3 Indices of growth in outdoor receation in B.C. 1970-1986







In both regions, the majority of use is carried out close to the large urban centres on streets, open spaces or parks. Walking and passive outdoor activities, such as picnicing, remain the most popular activity though there has been a diversification of pursuits, for instance walking has branched into rambling, hill walking, hiking, backpacking and power walking, and similarly skiing has branched into ski mountaineering, downhill skiing, cross-country skiing, ski skating and helicopter skiing (primarily B.C.) (Campbell, 1976). There is a greater diversifiction of pursuits in B.C. than Scotland as indicated in Table A2.19 identifying recreational pursuits of the survey samples.

New recreational activities are becoming cross-fertilised across the Atlantic with the growth of magazines, clothing and equipment retailers, and adventure holidays being exported both ways across the Atlantic. The diversification of pursuits and increased growth has caused problems in both regions in terms of public provision of space for these activities to take place.

State authority response during this post-war period has been to develop the governmental infrastructure for planning and managing recreation, as indicated in the Figure A2.4 and A2.5 of B.C. and Scottish systems.

Figure A2.4 Planning and policy making structure influencing recreational access in Scotland

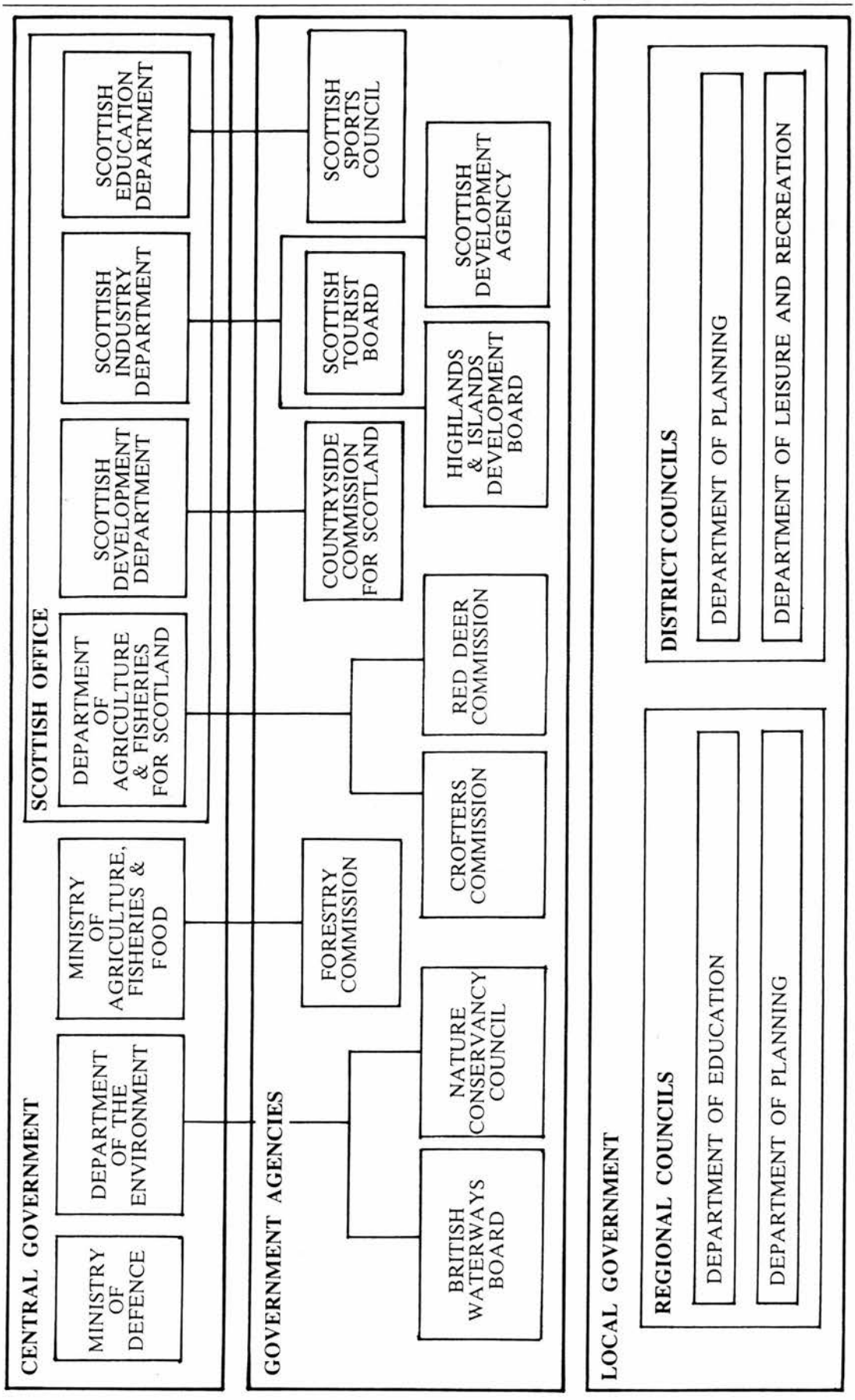
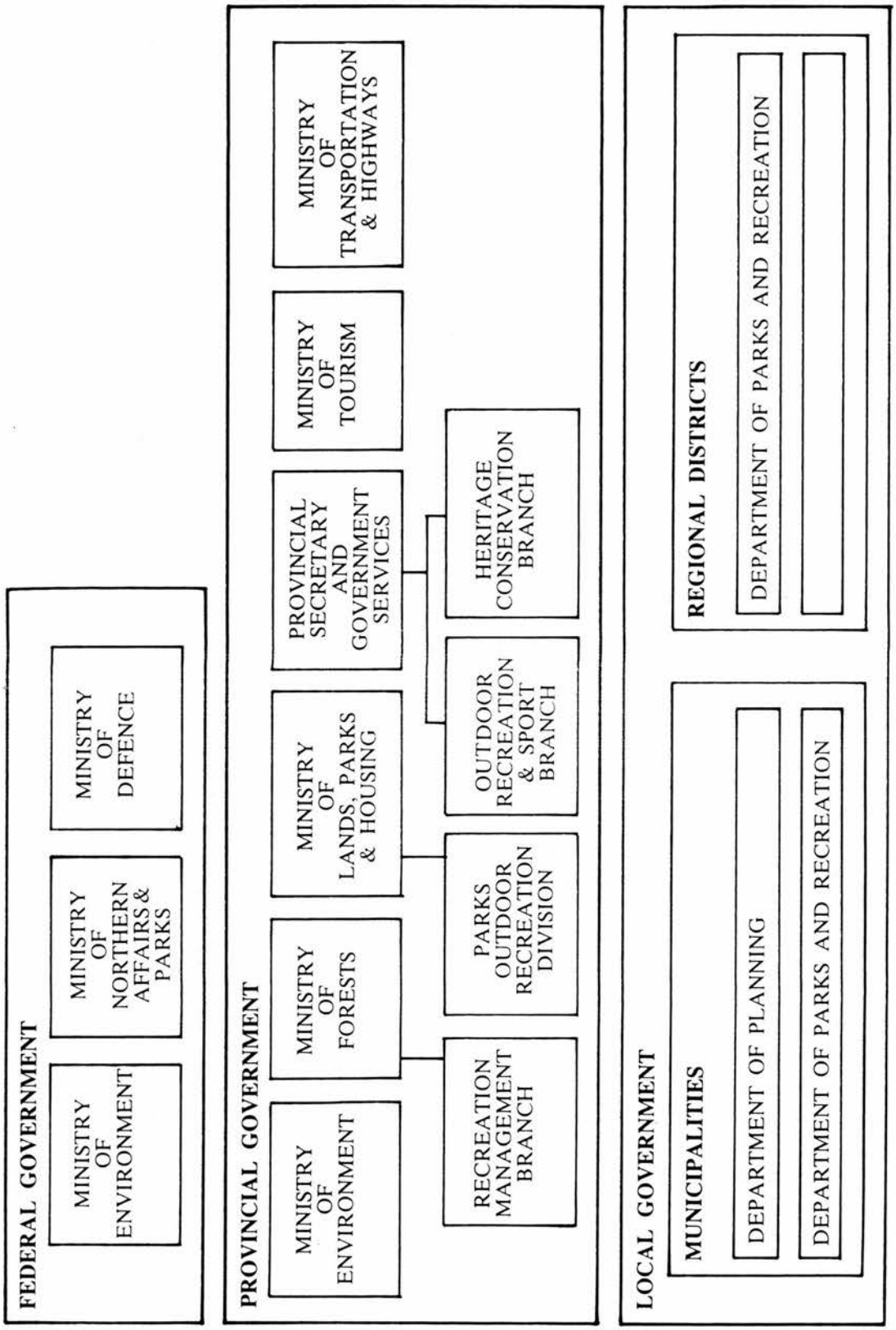


Figure A2.5 Planning and policy making structure influencing recreational access in B.C.



The second development has been to maintain control of land in the form of parks in a tiered system, within the larger context of a recreational system that is supported by other informal Crown provision, e.g., forestry land in both Scotland and B.C. Both regions have developed the original concept of pleasure grounds within the urban and urban fringe areas to handle the bulk of the pressures which have concentrated around the urban centres. In landward areas, legacies of forestry parks in Scotland and national parks in B.C. have created the top rank of the hierarchial park system, though in Scotland a new form of designation in nationally important areas is being considered. The main impetus for expansion of land purchasing and formal provision has come about in the last twenty years and both regions are now identifying their saturation limits.

In landward areas, where B.C. has not had settlements and incorporated municipal authorities, land management has been the responsibility of the province or nation. Large provincial or national parks are located in these landward areas and outwith the responsibility of any local or regional authorities (Figure A2.5), roughly similar to the large, Scottish, forest parks under the ownership and responsibility of the central government quango, the Forestry Commission (Figure A2.4).

With the increase in government funding throughout the last two decades, users have consolidated their lobbying efforts and organised into groups to make use of funding. They have also come to develop expectations or dependence on government funding. These trends have created problems for both governments in view of fiscal

restraints and policy changes as the question of subsidy becomes essentially a political one. On a management level, expectations of formal provisions have created their own demand and increasing use which has led to site specific problems of trying to retain amenity and/or conservation values alongside recreation.

Current rationalisation philosophies in both regions have led to curtailing of services, reduction in spending, user-pay philosphies, or a privatisation approach where the private sector is encouraged to take over provision of certain facilities. Future trends examined by managers in both regions have been integrated use, adaptations of planning designations used in densely populated European countries, for example, linear parks or long-distance footpaths, urban neighbourhood corners and trails, street quieting and pedestrian precincts, private sector footpath provision, the maximising of use around the seasons and throughout the day, the fragmentation of rights within private ownership and the encouragement of the public to liase with controlling interests directly and take on watch-dog, self-policing and maintenance functions.

Both regions, in face of rationalisation, have had to raise the issue of entry and passage across land as part of the expense inherent in provision, though this has been perceived as the least marketable provision on the commercial sector and subsidy or priority has been given to maintaining this "facility", even in charitable trust land like the National Trust for Scotland hill properties. However, even this facility is being masked via charges for other provision, e.g., the use of cross-country ski tracks in provincial parks of B.C. and Forestry Commission sites in Scotland

are now being charged for.

The impact of these changes on user patterns and trends has been quite diverse. Private trusts and user groups have proliferated and entered into more and more land acquisition and control. This trend has just begun in B.C. User groups have organised themselves more effectively into lobbies to protect their interests in land use issues.

Indication of this raised public concern with access to land are found in current policy statements of both the Countryside Commission for Scotland (CCS, 1987), and Outdoor Recreation Council for B.C., (ORC, 1985), representing the seeking public.

> "The Commission's strategy is founded on the need for co-operative working, within the following priorities:...
> 2. Safeguarding existing recreation provision and access opportunities..." (CCS, 1987e "Towards the Nineties", p.1)

> "the Outdoor Recreation Council of British Columbia is also in a position to support and assert public rights of recreation access. The Outdoor Recreation Council should:...
> 2. Offer assistance to individuals and organisations who are working to assert access rights...
> 3. Establish and maintain a register of recognised access routes in the province and their legal status..."
> (ORC, 1984 "Recreational Access in British Columbia: A Users Handbook, p. 10)

A2.4 Comparison of Scottish and B.C. users in the surveys and comparsions with the Census populations

Tables A2.17 and 18) compare socio-economic characteristics of the sample data with the Census data of 1981 in both regions. It is evident on all indices that the survey groups have higher social standings than the rest of their respective populations and that these user groups are broadly comparable with each other, with high levels of educational achievement, car ownership, and full-time

employment. The indices of occupation for both regions suggest higher levels of the professional and clerical classes (though this data is not presented in a comparative table due to different Census categories).

The most significant difference in the samples was the higher proportion of non-residents in the Scottish sample. The adjacent concentrations of population in England, create a larger influx of users than the resident population would ever create. This is significant in terms of the different access patterns and laws in England, and the impact of different cultural attitudes from English recreationists to the Scottish case study.

The other significant differences are the higher levels of participation and greater variety of recreational activities pursued by British Columbians (Table A2.19). They pursue hunting, fishing, backpacking, cycling, canoeing and watersports across a wider spectrum of society and to a higher degree than the Scots. These results are in accord with recreational statistics produced by Statistics Canada (1976). Increased involvement has two important bearings on the relationship. First, B.C. has a relatively high scale of involvement in outdoor activities which would compare with Scottish use statistics, despite the smaller population and, second, there is a greater percentage of individuals per capita involved with user groups and access issues.

Table A2.17 Comparison of socio-economic characteristics of survey groups with Census population in Scotland (1981) and B.C.(1981)

CATEGORY	VARIABLES	SCOTLAND CENSUS	SCOTLAND SAMPLE	BRITISH COLUMBIA CENSUS	BRITISH COLUMBIA SAMPLE
AGE	(15)16-24	24	22	22	17
	25-44	40	56	34	53
	45-64	25	14	26	23
	65+	11	4	18	6
	NO REPLY	-	3	-	1
EDUCATION	9-12 YEARS	N/A	43	60	32
	13-16 YEARS		41	36	44
	17+ YEARS		12	4	20
	NO REPLY		3	-	4
CAR OWNERSHIP /HOUSEHOLD	1 OR MORE	51	89	82	90
	NONE	49	11	18	7
	NO REPLY	-	-	-	3
EMPLOYMENT STATUS					
	FULLTIME	44	60	53	55
	PART TIME	7	8	8	9
	UNEMPLOYED	7	5	4	8
	RETIRED	24	8	11	7
	WORK IN THE HOME	13	7	14	5
	STUDENT	5	11	10	13
	NO REPLY	-	1	-	3
SEX	MALE	48	52	49	50
	FEMALE	52	44	51	47
	NO REPLY	-	3	-	3

Note: Data statistics between the two regions were not directly comparable and, therefore, were adapted for comparative purposes to the survey data and also between the two regions. As a result the universal population used for Census figures for British Columbians was individuals aged 15 and onwards and in Scotland aged 16 and onwards, except where indicated, e.g., car ownership per households. These figures are meant as rough indicators only.

Source: Canada. Statistics, 1981a-e
Source: Scottish Information Office, 1985.
All statistics for both Canada and Scotland derive from a 1981 Census.

Table A2.18 Comparison of socio-economic characteristics of survey groups with individual Census populations

VARIABLES	% CENSUS	% SAMPLE
ORIGIN OF BIRTH	SCOTTISH SURVEY	
SCOTLAND	89	48
ENGLAND AND OTHER UK	7	42
OTHER	4	10
ORIGIN OF BIRTH	BRITISH COLUMBIA SURVEY	
BRITISH COLUMBIA	46	49
ELSEWHERE IN CANADA	26	29
UNITED KINGDOM	9	8
ELSEWHERE IN WORLD	19	10
NO REPLY	-	4
HOME PLACE	SCOTTISH SURVEY	
GREATER GLASGOW	46	23
GREATER EDINBURGH	14	20
ELSEWHERE IN SCOTLAND	40	14
OUTSIDE SCOTLAND	-	43
NO REPLY	-	-
HOME PLACE	BRITISH COLUMBIA SURVEY	
GREATER VANCOUVER	42	51
GREATER VICTORIA	9	21
ELSEWHERE IN BC	47	15
OUTSIDE BC	-	11
NO REPLY	-	2

Table A2.19 Comparative general outdoor activities of visitors from survey groups

ACTIVITIES	SCOTTISH						BRITISH COLUMBIA						
%	PR	KP	BL	CC	RE	GF	SL	WL	RP	GP	AL	MP	GE
INFORMAL ACTIVITIES													
WALKING	85	37	39	58	81	65	72	80	29	50	42	28	48
JOG/RUN	5	12	4	2	14	3	18	10	36	29	12	9	20
CYCLE	5	17	25	6	6	10	18	25	72	67	26	14	32
RELAX/OTHER	10	6	4	5	6	-	-	30	12	6	14	28	8
ACTIVITIES ON FOOT													
HILLWALK	10	6	60	8	8	15	36	35	55	86	42	32	70
CLIMB/MOUNTAINEER	5	-	-	-	2	15	12	-	4	24	-	2	-
BACKPACK	-	-	9	-	-	-	-	15	4	36	8	-	12
ORIENTEERING/OTHER	3	-	4	-	-	6							
FIELD ACTIVITIES													
BIRD WATCH	8	-	-	-	4	3	-	10	-	3	4	4	-
NATURE OBSERV.	5	6	4	2	8	-	18	20	8	3	-	7	8
HUNT/SHOOT	-	-	-	-	-	-	6	-	4	3	4	4	-
FISH	10	-	-	12	10	-	18	10	19	9	22	52	20
HORSE TREKING	5	-	-	10	4	6	-	5	4	6	8	5	8
WATER ACTIVITIES													
SWIM	-	12	-	10	6	15	42	35	32	21	36	30	56
SCUBA	-	-	-	2	-	3	-	5	4	3	2	-	-
ROW/BOATING	-	-	-	2	4	3	-	-	-	-	-	-	-
SAIL/WINDSURF	-	-	4	26	-	3	6	10	8	14	12	2	8
CANOE/KAYAK	-	-	17	4	-	-	-	20	12	12	4	2	4
WINTER ACTIVITIES													
NORDIC SKI	3	6	-	-	2	-	-	10	11	36	8	7	20
DOWNHILL SKI	-	-	4	2	12	-	18	25	36	35	24	21	40
MOTOR ACTIVITIES													
WATERSKI	-	-	-	24	-	-	-	-	4	3	12	4	-
POWERBOATING	-	-	-	17	-	-	-	-	7	6	6	2	-
CAR CAMPING	-	-	-	8	2	3	12	30	66	16	64	59	28
FACILITY ACTIVITIES (GOLF, SOCCER)	13	17	17	6	22	15	12	30	42	28	12	22	28

APPENDIX 3

LISTS OF INTERVIEWS, UNPUBLISHED SOURCES CONSULTED AND STATUTES

A3.1 List of interviews

Interviews are organised into the different regions and into two categories in the regions: the first category includes land managers, controllers and state mediators, the second, interest group representatives.

A3.1.1 Interviews with land managers, controllers and mediators in Scotland

Adams, G. (int. February 8, 1985)
Director of Development
Scottish Tourist Board

Anderson, F. (int. January 14, 1985)
Planning Division
Scottish Development Department

Arbuthnott, Lord J. (int. March 5, 1985)
Landowner
Member of Countryside Commission for Scotland 1968-72
Land Agent to Nature Conservancy Council 1955-1967
Chairman of Red Deer Commission 1968-75
President of Scottish Landowners' Federation 1974-1979

Balfour, J. (int. February 15, 1985)
Chairman of Countryside Commission for Scotland 1972-1982
Governor of East of Scotland College of Agriculture
Member of Scottish Agricultural Development Council

Campbell, D. (int. February 5, 1985)
Head of Design and Recreation Branch
Forestry Commission

Crofts, J. (int. January 20, 1985)
Secretary to Working Parties on countryside issues
Convention of Scottish Local Authorities

Fraser, K. (int. February 28, 1985)
Director of Parks and Recreation
Glasgow District Council

Gordon, N. (int. January 17, 1985)
Planner
Nature Conservancy Council, Head Office for Scotland

Hewitt, S. (int. February 5, 1985)
Land Agent and Legal Advisor
Forestry Commission

Hughes-Hallet, D. (int. January 17, 1985)
Secretary
Scottish Landowners' Federation
Scottish Recreational Land Association

Kerr, A. (int. January 17, 1985)
Regional Officer
Nature Conservancy Council, South West Scotland Region

Langmuir, E. (int. January 17, 1985)
Director of Planning
Lothian Regional Council

Lonie, J.W.L, (int. January 15, 1985)
Director of Land Use Division
Department of Agriculture and Fisheries for Scotland

McKenzie, I. (int. April 29, 1985)
Chairman
Red Deer Commission

Morrison, G. (int. February 4, 1985)
Chief Ranger
National Trust for Scotland

Prior, W.B. (int. 1 April, 1985)
Secretary
Countryside Commission for Scotland

Sommerville, A. (int. January 14, 1985)
Conservation Officer
Scottish Wildlife Trust

Wedderburn, L. (int. April 29, 1985)
Senior Ranger
Rothiemurchus Estates, Aviemore

Young, J. (int. January 17, 1985)
Chief Ranger
Nature Conservancy Council, Head Office Scotland

A3.1.2 Scottish interest group representatives

Mollison, D. (int. February 2, 1985)
Chairman
Mountain Bothies Association

A3.1.3 Land managers, controllers and mediators in B.C.

Ahrens, R. (int. June 8, 1984)
Assistant Deputy Minister
Executive Office of Lands Division
Ministry of Lands, Parks and Housing
(formerly director of Parks Branch)

Campbell, C. (int. June 13, 1984)
Director of Recreation and Sport Branch
Ministry of Provincial Secretary and Government Services

Cooper, G. (int. June 13, 1984)
Lands Programs Branch
Ministry of Lands, Parks and Housing

Delikatny, J. (int. July 10, 1984)
District Manager of Provincial Parks and Outdoor Recreation Division
for the Garibaldi/ Sunshine Coast District
Ministry of Lands, Parks and Housing

Farquharson, K.G. (int. September 28, 1984)
Director of Talisman Land Consultants, Vancouver
Advisory Member of the Outdoor Recreation Council for B.C.

James, K. (int. July 7, 1984)
Deputy Approving Officer
Ministry of Transportation and Highways

Laird, J. (int. June 18, 1984)
Landscape architect
Parks and Recreation Branch
Corporation of District of Saanich

Lisman, J. (int. June 5, 1984)
Highway Safety Engineer
Ministry of Transportation and Highways

Marshall, H. (int. June 13, 1984)
Director of Recreation Branch
Ministry of Forests

Moffat, D. (int. June 5, 1984)
Manager of Planning and Research for Parks Program Branch
Ministry of Lands, Parks and Housing

O'Riordan, J. (int. June 10, 1984)
Director of Planning and Assessment
Ministry of Environment

Petersen,R. (int. July, 17, 1984)
Manager of Parks and Recreation Branch of Regional Office
Kamloops District
Ministry of Lands, Parks and Housing

Thompson, W. (int. July, 17,1984)
Recreation Resource Officer
Kamloops Forest District
Ministry of Forests

A3.1.4 B.C. interest group representatives

Armstrong, R. (int. June 24, 1984)
Executive Director
Lapidary, Rock and Mineral Society of B.C.

Bendall, K. (int. June 6, 1984)
Instructor
Conservation and Outdoor Education Course
(mandatory prerequisite for obtaining hunting licence)

Bicycle Association of British Columbia (int. June 20, 1984)

Carey, B. (int. June 21, 1984)
Executive Director
British Columbia Motorcycle Association

Carpendale, J. (int. July 10, 1984)
Float plane operator for private fishing camps in B.C.

Chow, S. (int. June 8, 1984)
Chairman
Western Chapter of Sierra Club

Creer, B. (int. June 24, 1984)
Secretary
Whitewater Canoeing Association

Flemming, C. (int. July 24, 1984)
Executive Director
Dive B.C.

Floyd, S. (int. June 21, 1984)
Executive Director
Canoe Sports of B.C.

Preston, C. (int. June 25, 1984)
Director
B.C. Orienteering Association

Rich, J. (int. June 20, 1984)
Legal Advisor
West Coast Environmental Law Association

Rodgers, E. (int. July 25, 1984)
Treasurer
Steelhead Society for B.C.

Rutter, J. (int. June 20, 1984)
Executive Director
Federation of Mountain Clubs of B.C.

A3.2 Unpublished sources consulted

A3.2.1 Unpublished sources of data in Scotland

Alexander, D. (precog., May 20-30, 1985)
Lothian Region Councillor
Lothian Planning and Development Committee.
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Adlington, R. (precog., May 20-30, 1985)
Chairman
Lothian Ratepayers Action Group
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Bowie, G. (precog., May 20-30, 1985)
Chief Executive
Lothian Region District Council
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

British Deer Society (brief October 23, 1984)
Submitted for Symposium on Deer and Public Recreation (never held)

Cairns, W.J. (precog., May 20-30, 1985)
Representative for National Farmers Union and Scottish Landowners Federation
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Convention of Scottish Local Authorities (COSLA) (mimeograph, 1978a)
"Walks and footpaths for recreation"
Working Group Report on Footpaths.

COSLA (mimeograph, 1978b)
"Report to the Planning and Development Committee by the Director of Physical Planning"
Working Group Report on a Park System for Scotland.

COSLA (letter, March, 1984)
Sent to Forestry Commission regarding forestry land privatisation.

COSLA (mimeograph, 1984)
Questionnaire circular on Walks and Footpaths for Recreation sent to local planning authorities.

Crofts, T.A. (precog., May 20-30, 1985)
Head of Policy Research
National Trust for Scotland
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Cowan, C.D.J. (precog., May 20-30, 1985)
Councillor (Conservative) to the Queensferry District
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Davies, I. (brief February 18, 1985)
Head of Facilities Planning
Scottish Sports Council
Delivered at Public Policy Seminar, Glasgow.

East Grampian Deer Management Group (mimeograph, August 2, 1984)
Press Release Statement from secretary on public access notices.

Easton, C. (precog. May 20-30, 1985)
Assistant Regional Officer
Nature Conservancy Council
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Findlay, N. (precog., May 20-30, 1985)
Factor Rosebury Estates
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Forestry Commission (letter, 1984)
Sent to COSLA regarding Forestry Commission policy on selling off woodlands.

Fraser, H. (precog., May 20-30, 1985)
Regional Councillor (Conservative) for Balerno/Baberton District
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Goodfellow, J (precog., May 20-30, 1985)
Convener of the Legal and Commercial Committee
National Farmers Union
Delivered at Pentland Regional Parks Public Inquiry, Edinburgh.

Graham, L. (letter, 22 November, 1985)
Farm Owner, Logan House, Penicuik
Letter sent to Regional Councillor for Queensferry
Pentland Regional Park Public Inquiry, Edinburgh.

Grosz, D. (precog., May 20-30, 1985)
Chairman of Scottish Branch
Ramblers Association
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Harris, H. (precog., May 20-30, 1985)
Secretary
Colinton Amenity Association
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Hope-Thomson, Major T.J.(precog., May 20-30, 1985)
Substantive Major
Ministry of Defence
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Knowles, B. (precog., May 20-30, 1985)
Representative for Royal Society for the Protection of Birds and Scottish Wildlife Trust
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Langmuir, E. (precog., May 20-30, 1985)
Director of Planning
Lothian Region Council
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

McClung, G. (precog., May 20-30, 1985)
Director McClung Ltd. of Swanston Estates
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Nickson, D.W. (brief, February 18, 1985)
Chairman of the Countryside Commission for Scotland
Delivered at Public Policy Seminar, Glasgow.

Scottish Countryside Activities Council (brief undated, 1984)
Working Party on Footpaths
Sent to Convention of Scottish Local Authorities and CCS

Scottish Woodland Owners Association (SWOA) (mimeograph, 1977)
Working Party on Countryside Recreation File PL14 6.1
Sent to Convention of Scottish Local Authorities

Sheldon, Dr. (precog., May 20-30, 1985)
Department of Planning
Lothian Regional Council
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Sidaway, R. (brief February 8, 1985)
Director
Centre for Leisure Research Unit, Dunfermline
Countryside Commission for England and Wales Access Study Director
Delivered at Public Policy Seminar, Glasgow.

Smith, J. (precog., May 20-30, 1985)
Representative for Pentland Hill landowners
Scottish Wildland Group
Delivered at the Pentland Regional Park Public Inquiry, Edinburgh.

Turner, R. (brief, February 18, 1985)
Assistant Director of Planning
Countryside Commission for Scotland
Delivered at Public Policy Seminar, Glasgow.

Turner, R. (precog., May 20-30, 1985)
Assistant Director of Planning
Countryside Commission for Scotland
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Wilson, Dr. (precog., May 20-30, 1985)
Director
Edinburgh Centre for Rural Economy
Delivered at Pentland Regional Park Public Inquiry, Edinburgh.

Watson, R.D. (letter, 22 August, 1984)
North East Mountain Trust
Letter to East Grampian Deer Management Group on access notices.

A3.2.2 Unpublished sources of data in B.C.

British Columbia Horse Owners Association (brief, 1975)
Brief to the Lower Mainland Parks Advisory Association.

Brummet, A.J. (letter and mimeograph, December 16, 1983)
Minister of Lands, Parks and Housing 1982-
Policy statement and letter sent to B.C. Cattleman's Association, B.C. Wildlife Association and Outdoor Recreation Council (ORC) representing ministerial views of the grazing lease issue.

Chabot, J. (letter, 1982)
Minister of Lands Parks and Housing 1978-1982
Letter sent to ORC on grazing lease issue.

Columbia Valley Guides and Outfitters (brief 1975)
Brief to Royal Commission on Forest Resources.

Council of Forest Industries (mimeograph, 1984)
Memo from the CFI to ORC on forest recreation access.

Darvin, K. (letter, June 28, 1982)
Chairman from Greater Kamloops Outdoor Recreation Council
Letter to ORC.

Dearden, P. (brief, September 28, 1984)
Chairman of Western Chapter of National and Provincial Parks Association
Brief from AGM, Bedwell Harbour.

Federation of B.C. Naturalists, (brief, 1975)
Brief to Royal Commission of Forest Resources.

Forest Land Use Liason Committee (mimeograph, 1981)
"Consensus statement on trail management in active logging areas"
Sent to ORC.

Forest Land Use Liason Committee (mimeograph, 1981)
"Consensus statement on management of logging and forest access roads during and after periods of active logging"
Sent to ORC.

Kennedy, Y. (letter, January 5, 1976)
Programs Director for Regional Development Commission for the Outdoor Recreation Council in the Fraser-Fort George Regional District.
Sent to ORC.

Kenyon, G. (brief February, 1974)
Brief on Wildlands Access submitted to Council of Forest Industries, Ministry of Forests and Ministry of Recreation and Conservation.

Macgregor, M. (letter and mimeograph, February 14, 1984)
Acting Chairman
British Columbia Cattleman's Association
Sent to the ORC and the Minister of Lands, Parks and Housing with views on grazing lease issue.

McMinn, R. (brief, 1982)
Chairman of Greenbelt Society and member of Saanich District Trails Committee
Brief submitted to Trails Committee meeting.

Norlin, A. (letter September 3, 1983)
Letter to Access Hotline, ORC.

Outdoor Recreation Council (mimeograph, August - October, 1983)
Access Hotline compilation of letters and recorded messages.

Reed, T. (brief, February, 1975)
B.C. Snowmobile Association
Brief to the Recreational Use of Wildland Conference, Lower Mainland Regional Seminar.

Roesner, W. (letter, February 26, 1984)
British Columbia Wildlife Association
Sent to the BCCA and Minister of Lands, Parks and Housing and representing views on recreation on grazing lands.

Skiier's Cross Country Touring Club, (brief 1975)
Brief submitted to Lower Mainland Parks Advisory Association.

Urban Trails Group (mimeograph, February 16, 1976)
Minutes of meeting. Vancouver.

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A3.3 List of statutes consulted

The following lists place the statutes in alphabetical order by their short name. The earliest date refers to the date of enactment and subsequest dates thereafter refer to amendments and/or future references made to them.

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Artisans' and Labourers' Dwellings Improvement (Scotland) Act 1875

Article 19 of Council Regulations (EEC) No. 797/85, 12 March 1985

Burgh Police (Scotland) Act 1894 also 1903

Capital Gains Tax Act, 1979

Civic Government (Scotland) Act, 1982, c. 45

Coal Industry Nationalisation Act 1946, c.59

Countryside (Scotland) Act, 1967

Day Trespass Act 1832

Firearms Act, 1968

Forest Act 1919

Land Registration (Scotland) Act, 1979

Local Government (Scotland) Act 1889,
1894 c.73, 1947, c.43, 1966, c.42
1970, c.28, 1973, c.65
1978, c.4

National Parks and Access to the Countryside Act 1949

National Trust for Scotland Confirmation Act 1935

Night Poachers Act 1828

Parks Regulation Act 1872

Poachers Act 1707

Prevention of Poaching Act 1869

Public Health (Scotland) Act 1867

Public Parks (Scotland) Act 1878

Railway Clauses Consolidation (Scotland) Act 1845

Roads and Bridges (Scotland) Act 1878

Scottish Development Agency Act

Small Landholders (Scotland) Act 1911

Transport Act 1947 and 1962

Trespass (Scotland) Act 1865

Trusts (Scotland) Act 1921

Wildlife and Countryside (Scotland) Act 1981, c. 69

A3.3.2 List of statutes for B.C.

The first date that appears after the short title of the act is the date of enactment in the Statutes of British Columbia (S.B.C.). Other dates refer to later amendments in the S.B.C. or the Revised Statutes of British Columbia (R.S.B.C.), Consolidated Statutes of Canada (C.S.C.) or British Columbia Sessional Papers (B.C.S.P.) consulted or referred to in the text.

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R.S.B.C. 1979, c.101

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R.S.B.C. 1979, c.110

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Forest Act, 1912, c.17
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S.B.C. 1914, c.32
R.S.B.C. 1936, c.102
R.S.B.C. 1948, c.128
R.S.B.C. 1960, C.153
S.B.C. 1978, c.23
R.S.B.C. 1979, c. 140, sec. 104-107, pt. 9
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Game Act, 1914, c.33
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Grazing Act, 1919,
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Highway Act, 1948, c.144
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R.S.B.C. 1979, c.167

Highway (Industrial) Act, 1960, c.192
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Indian Act (National) C.S.C. 1886

Islands' Trust Act, 1974, C.53

Land Act, 1970, c.17
R.S.B.C. 1979, c.214

Land (Crown) Act 1875, c.98
R.S.B.C. 1877, c.98
S.B.C. 1901, c.30
R.S.B.C. 1948, c.175

Land Act 1970, c.17
R.S.B.C., 1979, c.214

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S.B.C. 1921
R.S.B.C. 1924, c.26

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Mineral Act 1977, c.54
R.S.B.C. 1979, c.259

Mines and Gold Act 1875, c.123

Motor Vehicle Act R.S.B.C. 1979, c.288

Municipalities Act, 1888

Municipal Act, 1914, c.52
R.S.B.C. 1960, c.255
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National Parks Act C.S.C. 1885

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R.S.B.C. 1979, c.309

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Preservation of Game 1862

Public Parks Act, 1876, c.132

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APPENDIX 5

GLOSSARY

(Definitions are either from common dictionary sources or if specific, the source is quoted)

Access - means or right of entry, passage or approach, to and across an object, for example, land resource;

Accessibility - the extent to which an individual exercises his/her means of entry, passage, approach (Centre for Leisure Research, 1984);

Active recreation - forms of recreation which involve a high degree of physical exercise;

Attitudes - an individual's feelings towards and beliefs about the object of the attitude (Schiff, 1971);

Belief - persuasion of the truth of anything;

Cognition - psychological process whereby individuals obtain, organise, store and use information (Gold, 1980);

Common law - law made in the courts by judges, originating in England (Card, Murdoch and Schoefield, 1981). British Columbia inherited the common law in 1858 and from Confederation onwards was responsible for making its own common law;

Corporeal - things which can be seen or touched;

Crown lands - include ungranted Crown or public lands or Crown domain and are within and belong to the Crown in right of the Province of British Columbia and whether or not any waters flow over or cover the same (R.S.B.C., 1912);

Crown grant - any instrument in writing under the public seal of the colony to convey land in fee simple (R.S.B.C., 1871);

Crown timber lands or forests - any trees, timber and products of the forests in respect of whereof the Crown in right of the Province of British Columbia is entitled to demand and receive any royalty, revenue or money (R.S.B.C., 1912);

de facto access - a means of gaining entry by the public to land but not necessarily with the legal right to;

de jure access - a means of gaining entry by the public to land by right;

Doctrines of Estate - the legal doctrine that states that ownership can be split up into interests of different durations, e.g., freehold, leasehold, trusteehold (Card *et al*, 1981);

Doctrines of Tenure - the legal theory that land is not owned outright but held by and for the Crown (Card *et al*, 1981);

Easements - third party right in land which may be legal or equitable (Card *et al*, 1981);

Facility - natural or man-made resources developed to facilitate for recreational use;

Feu - perpetual lease; grant on feu;

Footpath - a path facilitating access; not necessarily legally defined;

Formal access - entry or approach to land which is given definite, especially legal form to, often indicated explicitly by signs, etc.;

Formal recreation - forms of recreation where there is organisation of people and/or equipment;

Freehold (fee simple estate) - an estate of inheritance that with the death of the owner passes to to heir (Card *et al*, 1981);

Hinterland - land outside of settlements (see settlements) where land is not permanently occupied;

Incorporeal - things which cannot be seen or touched, e.g., rights;

Informal recreation - casual forms of recreation which do not require the organisation of people or equipment;

Injuria - infringement of another's rights;

Interdicta - judicial process restraining person from wrongful act;

Land controller (also landholder)- individual/s or agencies in possession and control of land, not necessarily through ownership but through some form of tenure;

Land resource - all land regardless of type of tenure; land that is currently providing the opportunity for satisfaction of human wants and land that could in the future (adapted from Sauer, 1952);

Land tenure - form of right or title under which property is held;

Leasehold - a leasehold interest is where another landlord or lessor grants him/her exclusive possession of property as tenant/lessee for a certain defined period (Card *et al*, 1981);

Licence - passes no interest in the land, it makes lawful some use of the land (Card *et al*, 1981);

Linear recreation - forms of recreation which are pursued along linear routes on land or water;

Management - input of labour and capital to maintain land and/or facilities where formal or informal recreation takes place at a given level of development, condition or quality;

Mediator - third party appointed by state to mediate between the interests of 'land controllers' and 'seekers';

Natural resource - natural feature of the environment which provides or may provide in the future, opportunities for the satisfaction of human wants; natural resources are in fact cultural appraisals;

Natural rights - natural rights arise out of operation of laws to enable owner enjoyment of property;

Outdoor recreation - embraces the wide variety of activities which are undertaken outside during leisure (Wall, 1981);

Ownership - the legal relationship existing between a person and a thing (land). Absolute ownership is the right of using and disposing of a subject as one's own, except so far as restricted by law or paction (Rankine, 1909);

Passive recreation - forms of recreation which do not involve a high degree of physical exercise;

Patrimonial - Crown acts as agent for public, can demand fees for grants or percentage, as opposed to guardian or trustee whereby something is retained for free use;

Perception - is the impression one has of a physical stimulus or set of stimuli, modified by past impression and present state (Schiff, 1971);

Possession - the having or holding of a thing within the possessor's control (Rankine, 1909);

Possessory remedies - remedies directed to protection of possession, i.e., retaining possession when disturbed and recovering it when lost. The ability to prosecute trespassers is a possessory remedy (Rankine, 1909);

Prescription - uninterrupted use as a basis for a right or title;

Principle - a fundamental truth; law or doctrine from which others derive;

Public access - means of entry, approach and passage across land available to the general public;

Public right of way - a right of passage open to the public at large, over private property, by a defined route. Legally, there are 3 types of public rights of way: a footpath, a bridleway and a vehicular route. (Countryside Commission for Scotland, mimeograph, 1978); in B.C. an easement without a dominant tenement, for the purposes of obtaining public passage over private property (Land Title Act);

Real rights - a power given by the law of disposing of things or exacting from persons that which they are due;

Recreation corridor - refers to ribbons of land and/or water along which people may travel to gain a recreational experience;

Recreational resource- natural or man-made feature which provides or may provide in the future, opportunities for recreation;

Regalia - those things put beyond the reach of ordinary commerce which the Crown appropriates, which if appropriated by an individual would usually be to the public loss; *regalia majora* cannot be alienated or disposed by the Crown; the Crown acts as guardian of majora for public interest, e.g., navigational rights of way. *regalia minora* can be alienated and therefore are held by the Crown for profit to the public or Crown purse, e.g., forests, minerals (Rankine, 1909);

Resource - natural or man-made feature of the environemt which provides or may provide in the future, opportunities for the satisfaction of human wants ;

Resource-based recreation - recreational pursuits which are geared to or dependent upon features of the natural environment which in itself attracts users;

Right of way - like easement, a third party right in land which is legal. Public rights of way are where the right is vested in the public at large (Rankine, 1909);

Seekers - recreational users who seek access to land for recreation;

Servitude - subjection of a property to an easement;

Settlement - a colony, village or those places where some permanent occupation and daily life is carried out; can be agricultural or town settlements;

Spatial Access - passage over land that is not restricted to a linear path;

Statute law - law made by a legislative enactment;

Trail - a path over land facilitating access; not necessarily legally defined;

Trespass - wrongful entry on another's land;

User-based recreation - recreational pursuits which are geared to the needs of the user.

BRITISH JOURNAL OF CANADIAN STUDIES

Volume 2 Number 2 December 1987

CONTENTS

Briony Penn

ACCESS TO LAND FOR RECREATION IN BRITISH COLUMBIA: AN HISTORICAL REVIEW WITH PRESENT-DAY IMPLICATIONS*

In the last twenty years in British Columbia, serious conflicts over land use have emerged between outdoor recreation lobbies and industrial and private interests. At the heart of these issues is a basic intolerance of integration, and a confusion over public rights of access and ownership. The conflicts have not been confined to urban areas where competition for land is greatest, but occur throughout the hinterland of the province in wilderness and park areas. Similarly, conflicts have arisen over both formal and informal opportunities, for instance parks as well as open spaces. Whatever the scale or location, the nature of the problems is inherently the same and is rooted in the legal constraints on access and conditioned attitudes towards public access to land that have arisen during British Columbia's relatively brief colonial history. These two factors have contributed to a pattern of public rights of access which lies uneasily within the changing landscape and perceptions of a maturing province.

The following present-day debates illustrate the conflicts and beg the question: how have they come about?

* * * * * * * *

A physically accessible shoreline on Vancouver Island's east coast and the southern mainland west coast has now been taken up by restrictive private and industrial development. It appears that the Crown is obliged to retain a public right of access to the foreshore yet this obligation has been eroded by the alienating of the foreshore through grants of private rights.

The largest outdoor recreation lobby, the British Columbia Wildlife Federation, first raised the question about public rights of access to Crown-owned forest lands in 1947. Since these constitute ninety-six per cent of the

province, the scale of the debate was huge. At the time, any roads within provincial Crown forests were deemed private. Forty years later, the question is still being debated, and by a much greater variety of outdoor recreation interest groups. Further, the question has increased in complexity with factors of management, zoning, security of access and conservation filling out the debate. Debates have centred on clarification of public rights of access and public rights of ownership, on land historically reserved for industrial use.

Within the urban areas of the province, a range of pressure groups has arisen demanding better access corridors, such as foot and cycle paths. Planning and implementing these paths and corridors have been highly problematic. The main problems have been the lack of legal procedures to deal with public rights of access and an obstinacy of municipal authority attitudes towards integrating outdoor recreation in the city fabrics.

Along waterways, fishermen and water sports enthusiasts have found access to rivers cut off by private and industrial interests. Though navigational rights existed once on the waterways, access to them is denied. This has initiated debate about the legality of blocking access to a public place.

Much of the interior plateau is used for ranching. The tenure of ranching land varies from private ownership to short permits for removing hay. In the last ten years, pressures between outdoor recreationists and ranchers have intensified since they share much of the prime bottom and plateau land. The debate has become multifold. First, to what extent does publicly owned land have to be made known to the public? Secondly, are temporary tenures legitimately able to block public access to Crown land for recreation? Thirdly, where temporary tenures control gates to high lands and public parks do they have legitimate rights to become gatekeepers and, thereby, control land not actually in their possession?

All the debates have common themes: the inability of the traditional legal pattern to define adequately public rights of access and obligations of management; and the vagueness of the concept of integration. Why has this come about?

This paper addresses this question and traces the historical background of intolerance and ambiguity towards integration of public access with other land uses in British Columbia. By looking at the early legal structure and the perceptions of British Columbians, some light may be thrown on why these debates have evolved, how the changes have come about and the implications for the competing land use interests.

Because of the nature of the subject — public access — the discussion necessarily has to embrace a wide range of factors. These factors are drawn together within the conceptual framework of access. A glossary is provided at the end with the working definitions for the discussion. Access is defined as the entry and use of land: opportunity of approach. However, nothing is straightforward about that opportunity and on closer inspection a complicated relationship between land and people must exist for that opportunity to be realised.

Broadly, access describes a four-way, dynamic relationship between those people seeking the means to enter and use land temporarily, those controlling the means, the land resource itself and the legal institutions mediating the power between those seeking and those controlling. It is the latter three elements of the relationship that are examined here, namely the historical institutions, the legal infrastructure of the resource and the resource itself. Outdoor recreation pressures on the resource by the public were only to emerge in the post-war period but by then the landscape was already bound by the social and legal constraints determined by its economic history.

These interrelated factors naturally fall into various subheadings, for instance, first, the law, institutions and the landscape varied between the hinterlands (land outside settlements and cultivated areas) and 'settlements' and secondly, with different land uses and tenures, specifically in the hinterland where land management became fragmented under different uses. As a result, the discussion is broken down into broad headings of hinterland and settlement, with subheadings of land use and tenure under hinterland.

Despite the fragmentation of land uses with accompanying land policies, the general principles underlying these policies had a uniformity and a continuity through time and space. These principles of the early governing bodies constitute the problematic legacy that troubles British Columbia today.

Two critical principles adopted were that of controlling the land resource for the Crown and promoting single land uses, both having developed because of the sheer size and nature of the landscape. As a result, by the turn of the century, the current pattern of land tenure had been established with ninety-six per cent of the land retained in the ownership of the Crown. The principles of Common Law to ensure the best use of land and grant possessory remedies ensured the protection of exclusive use of land and a trespass ethic. None of these principles addressed public access directly for there was no need in an empty land: hence the legacy of a vague and indeterminate pattern of public rights to land for recreation. Where rights did exist, the law was little concerned with recreation as such and defined rights within the terms of Common Law, for example, rights of way or navigational rights. More important, Common Law defined where rights did not exist through the mechanism of possessory remedies, such as trespass, that protected and controlled the exclusive use and enjoyment of possession of land.

* * * * * * * *

'We'all now, what's that'er flag, with them letters?'

'Le'ss see, "B.C." in ancient history means "Before Christ" I believe . . . fur this 'fernal location don't 'pear to bin much overrun with strangers since that period. 'Guess I'll make tracks back to Californy right smart you bet!' (Excerpt

from *Very Far West Indeed*, a journal by R. Byron Johnson, 1860, private collection. The excerpt records a conversation, overheard by the author, of two people aboard a boat approaching Victoria, British Columbia, in 1858.)

The impact of an empty and vast land on the perceptions of the small, predominantly male, eclectic population of European, Chinese and American colonists has dominated the public consciousness to this day. The potential for the extraction of primary resources and the physical inhospitability of the land shaped the perceptions held by this group of both colonists and governors. Agrarian settlement was impossible except in widely separated valley, plateau and coastal pockets and there was, therefore, no chance of a shared rural consciousness. As a result, the town and the hinterland became very clearly polarised with the main permanent settlement being contained on the south coast, or near transport lines through the interior. The hinterland was separated from settlements and, moreover, was considered the industrial means to living in the security of the towns.

On to this perception of the land, the Common Law of England was grafted to govern the motley collection of colonists and, more importantly, the Crown's resources. The Common Law that was adopted by the first governor, Sir James Douglas, was a version of English Common Law moderated by his own understanding, his own interpretations and his own observations of the experiences of other colonies. Essentially, he brought to the colony the principles of tenure and estate. But, given the task of managing Crown land remedially with limited financial resources

> in an uncharted wilderness of unknown area, and unsuspected resources, inhabited by many thousands of Indians and a few thousand transient miners. . . . Douglas had to devise a land system for not only the most accommodating but also widely scattered areas of arable land. (Cail, 1974, p. 1.)

The principles he laid down for this difficult task still pervade British Columbia land policy today. His policies influenced the way land was to be possessed and defended and how public rights were to be identified and secured. In his first proclamation concerning Crown lands he established the following principles:

> (1) all land belonged to the Crown and all minerals.
> (2) the executive of the colony could reserve portion of unoccupied Crown land for public purposes.
> (3) all land was subject to rights of way, public and private, for water, pasturing, mining, which may at any time after sale be specified by the Chief Commissioner of Lands and Works. (Douglas to Lytton, February 19, 1859 in Bury, 1860, p. 12.)

These principles embraced the doctrines of tenure and regalia (see Glossary) but had their own colonial flavour. The governors endeavoured

to avoid land speculation whilst at the same time to encourage honest settlement. Land and security were given to settlers through legislative means if they demonstrated the 'best use' of the land, but the government retained some control through retaining ownership of Crown regalia, such as mineral rights and future rights of way.

These principles were applied both to the settlement of towns and agricultural areas and to the exploitation of the resources in the hinterland. Application varied through time as knowledge of the resource grew and demands changed, and also varied between town and hinterland. In essence, two laws of the land based on similar principles developed. These principles have shaped the pattern of opportunity for outdoor recreation in both settlement and hinterland. The impact of these principles on access for recreation in the settlements will be examined first, followed by impact on access in the hinterland.

* * * * * * * *

The most critical constraint on public access in settlements, including agricultural land, was the development of the trespass ethic. The governors needed to attract settlers and encourage the 'best use' of the land so that they would have a secure community to govern. The commitment in statute to security for the settler is evident from this statement in a handbook written in the Victoria *Colonist* (1893, p. 1) in an attempt to lure settlers:

> In a country where land is the staple investment, where every thrifty man owns real property and where there are practically no agricultural tenants, it is of the first importance that titles should be secure, transfer easy and registration in every way beyond possibility of error. The system has been framed to that end.

Security was given through the protection of tenure whether permanent tenure, for example, estate in fee simple, or temporary tenures such as leases. In this way, any *bona fide* occupier of land was entitled to exclusive use and enjoyment of that land, with title to prove exclusive use and Common Law remedies of trespass to protect his exclusive use.

An additional grant of security was given through the statute law of trespass which was enacted to provide a summary remedy 'for the protection of farmers and other occupiers of land against trespassers'. (RSBC, 1897, C. 186, Section 2.2-2.3.) A trespasser was defined as any person or livestock found inside an enclosure without the consent of the owner or occupier, so that even temporary lessees of the land had the legal remedy of prosecuting trespassers. This legal mechanism to grant security had an impact on access both physically and perceptually. Since settlement demanded the presence of posts and fences to be *bona fide*, the association of fence with trespass and property marked the settled landscape as inaccessible in people's minds.

Security was central to a settler's mind — security from competition for the land whether it was squatters, other settlers' cattle in the growing interior cattle lands, Indians or any threat to his tenuous existence in a perceived hostile land. This need for security reinforced a strongly western European notion of the exclusive enjoyment of private property and the rights of possession, which extended to temporary leases and even licences of the land.

Another critical constraint on access came about indirectly through the principle of setting aside reserves, rights and privileges which enabled the governors to act like feudal lords. Land was one thing the government possessed and in the settled areas land could be allocated to specific uses simply by designation. This land policy had a triple effect on public attitudes. First, it created a single use view of land, including recreational land, so that no tolerance for integration of land uses was ever nurtured.

Secondly, it created a complicated mosaic of public, semi-public and private lands to which public rights of access were left undefined. The Crown's right to set aside reserves for single purpose functions, for example, school lands, church lands, Indian lands, and in 1876 even park lands, was exercised to the utmost while land was available. These reserves were set up on the principle of a corporation or trusteeship, with an appointed board of trustees who owned and managed but could not sell the land. These lands were in essence private lands under the trust of those individuals appointed to the managing board. The confusing legal basis of designation, ownership, management and possession of these lands proved no problem so long as the pressures on these lands remained low. But the legacy of vagueness has had an impact on accessibility today. The public are now trying to determine whether these reserved lands provide them with an interest in the land, a public right to occupy the land temporarily or no rights at all. This demand for open space in cities and towns is prompting the public to examine their rights of access to some of these quasi-public lands.

The third effect was to be more positive in that large areas of primarily recreational space were reserved within the townscapes, as long as they proved the best use. Under the principle of regalia, the Crown retained the ownership of the foreshore, tidal river banks and navigable rivers. As in Britain under Common Law the Crown acted as trustee for public rights of navigation and fishing access along the foreshore. The governors decided in 1867 to retain the Crown title to foreshore as well. This allowed a public right of access to develop as subordinate to the navigational right of access. Thus, one of the most important recreational resources of British Columbia was indirectly established. Public rights of passage were also reserved on the water of navigable rivers, though non-navigable rivers, lakes and streams within private land remained private as in Common Law.

More directly, urban parks were formally designated for the use and enjoyment of the public. From 1860 onwards, clauses within the Land Registry Act and Land (Crown) Act (Appendix to RSBC, 1871) described

the mechanisms by which public or private land could be retained as public parks (Public Parks Act, 1876, C. 132 of *Law of British Columbia*, 1877 later written into Municipalities Act by 1888, RSBC, 1897). Consequently, a percentage of private land could be expropriated at a time of subdivision by the municipality on behalf of the public, or the lieutenant-governor could set aside reserves for the pleasure and recreation of the public.

As in Britain, the urban parks were the first type of park to be designated. Influenced by the tastes of Victorian England and American planned cities, the wealthier settlements of Victoria and New Westminster encouraged the appropriation of scenic city gardens and parks. A Scottish landscape architect, John Blair, was the designer of the oldest park in Victoria, Beacon Hill (1888), modelled on New York's Central Park. The idea had been generated twenty years earlier as this editorial illustrates:

> We are unqualifiedly in favour of extending the area of liberty. We want to have room to spread out after selling fiddle strings or steam engines, crinolines or town lots, soda water or camphere . . . (Editorial in the *British Colonist*, Victoria, 1861.)

With a designation of municipal park, rights of access for recreation were expressly granted under the by-laws enacted by the appointed park councils, though the land itself was never publicly owned. Use was regulated so as to be consistent with the management's objectives. The limitations of this designation have only been realised recently when differing attitudes about the functions of urban parks have arisen.

The principle of granting rights of way was never intended for recreational opportunities. Rights of way were largely adopted for transportation corridors, through local managing authorities. Transport corridors were developed for the use of vehicles, first wagons and later automobiles, though mechanisms for adopting rights of way for footpaths did exist through Common Law. As a result, no historical infrastructure of footpaths developed that would have accommodated later recreational use, as had occurred in Britain.

Most of the needs of movement and public passage were absorbed by statutory highways. The planning of the cities and towns in grids with surveyed subdivided parcels of land, sidewalks and reserved roads and highways, ensured that, in the settled areas of the colony, there was no need for a prescriptive source of action to be taken by any individual for a right-of-way. Access for recreation on sidewalks and roads was never expressly granted but was tolerated so long as recreational use was consistent with intended use.

Whether it was for transportation, housing, parks, or institutional land use, the Crown's principle of reserving land for those specific uses dominates the early patterns of development. As a result, within settlements there was little need to rely on ways to integrate uses of land. If an individual wanted some land on which to hold church meetings then he had

only to apply for a grant from the lieutenant-governor, pay a nominal fee for the land if any, and set up a board of trustees. A polarised view of using land and a vagueness of defining public rights of access was the luxury of an empty land.

Today, urban trail and open space lobby groups have been exploring means of integrating green areas into the city fabric beyond formal provision. They are typically demands for corridors and places to walk, run, or ride bicycles, away from motorised traffic. The problems of managing these areas, protecting them from changing land uses and implementing them have led to demands for legal reform.

Inevitably, informal negotiations with different owners and managers have proved unsuccessful and the only means of securing access has been through acquisition and assertion of public rights of access. Depending on local authority attitudes and resources, the realisation of these corridors has varied but generally been minimal. In one case in the capital region, the local authorities held the power to implement trails through the same mechanism as roads. The authorities refused to exercise this power as they did not recognise foot trails in their remit. The fiscal arguments increase against acquisition, opportunities to purchase shrink but the demands and the issues remain unresolved.

* * * * * * * *

Settled land comprised about one or two per cent of the total land base of 359,279 square miles occupied in 1871 by 9,092 whites, 459 coloureds and 1,319 Chinese (*Census of Canada*, 1860-1871, vol. 2, p. 377). In the hinterland, this balance of plentiful 'waste land' with no administrative body acquired a seemingly schizophrenic status. It was the Crown's land but also available for anyone's consumption.

> The prevalent attitude was to be that . . . should anyone have enough initiative to pay a nominal price, no hindrance should be put in his way. (Cail, 1974, p. xiii.)

The policy of granting security to ensure best use at the same time as maintaining public control through ownership of the resources in the hinterland was to leave a troubled legacy. First, early settlers came to view Crown land as an economic commodity under the control of a government eager to see returns made on the waste, but available to members of the public showing initiative. Second, because this initiative tended to be the characteristic of industrial companies, a partnership between industry and government was quickly established. Consequently, the legal infrastructure had as its goal the protection of industrial security. Public rights of access to this quasi-public land were either vague or designed to favour the possessory rights of industrial occupiers.

A. Park Lands. The policy of granting land to the best use of land was adopted even with respect to national and provincial parks. Parks initially were no guarantor of public rights of access. Some of the most scenic mountainous areas of British Columbia lying within railway properties with no apparent economic use came to be designated as park land to attract tourism. The appropriation of scenery began in the interior alongside the tourist hotels adjacent to the Canadian Pacific Railway. Victorian leisure tastes for paying to see scenery spawned the national park system. W.C. Van Horne, the General Manager of the Canadian Pacific Railway, wrote in 1886:

> the object of the reservation is not really to provide for parks in the ordinary sense but to preserve the timber at places where the finest scenery occurs, as the scenery will be much injured by it being cut away. (W.C. Van Horne, 1886 in Marsh and Wall, 1982.)

Early designations of national parks did not grant public rights of access to the site for recreation but ran them as commercial ventures with charges being levied for visits to hot springs or specific viewing points, and often land within the parks was leased or sold to catering and hotel services.

The British Columbia Parks Act (RSBC, 1911) followed very much the same formula and made legal provision to revoke designations or change boundaries when mineral and resource interests were seen to surmount tourist benefits. Parks trustees granted rights of access to the land but precluded public interests in park land.

Today, park boundaries continue to alter and these changes to parks that the public have come to accept as public land are being challenged. Public perceptions of the single use of land are not readily accepting the alternatives of integrating industrial uses with recreation and conservation. The principles of 'best use' are now being questioned by a more voluble public who have differing values for the land resource than those of the governing bodies.

As park opportunities erode today, the public are looking increasingly towards Crown lands for their recreation. Within these lands, the public are having to challenge pervasive traditions of constraints accompanying the uses to which the land was designated.

B. Crown Forest Land.

> As Germany was to the Romans, so much of our new world is to us! . . . Germany has been cleared of her forest and is now one of the finest most progressive of European countries. May not the clearing of our forests produce a similar result in the distant future of British Columbia. (Professor Macoun of the Geologic survey quoted in Land and Agriculture in B.C., Canada, Official Government Bulletin No. 10, 1911.)

Since most of this Crown land was forested and most of the agricultural land suitable for settlement was 'claimed' by the turn of the century, it was

logical that industrial initiative found its market in timber and land policy moulded itself to the use of land for forestry. The impacts of the industry on access were made in a variety of interrelated ways.

The beginning of Crown control of timber lands began essentially in 1912 with the first Forest Act (RSBC, 1924, C.17) in response to the growing demand for timber. Before this, 900,000 acres had been purchased outright (mainly on Vancouver Island) but the estimated 182,000,000 inexhaustible acres of land (BCSP, 1911) remained in the province's control.

The 1912 Act established a status quo that has lasted to this day. First, land and management of land remained in the control of the government. Secondly, the timber could be dispensed in a variety of different tenures each of which had a different legal impact of public access, and thirdly, in the Crown's forests travellers could not be construed as trespassers as long as they were not damaging forests or interfering with operations.

At the time, recreational use and industrial use had the luxury of choice and could co-exist independently with this vague arrangement. Today this arrangement has become problematic with regard to recreational access. As these areas have become more physically 'accessible' and competition for use has arisen, the vagueness of rights to the land as opposed to rights in the land and the confusing mosaic of tenures has only aggravated negotiations between the interests. Again, the 'best use' of the land is argued and demands for clarification of rights are made. A hot bed of issues has arisen in recent years amongst a wide range of interests. Amongst the foresters, hikers, snowmobilers, fishermen, hunters, climbers and four-wheel drivers, all claiming legitimate rights of access to the forests, there is little agreement of what integration means. The arguments have not really progressed from the dichotomy of who has the legitimate right 'to' the land and who the legitimate right 'in' the land.

Most of these issues are rooted in misinterpretations of what public land means in terms of vested interests to the public. Also, previous tolerance of access to Crown forests where no occupiers exercised possessory rights has led to perceived public rights to the land. An examination of the historical context suggests that the resolution can not exist entirely in clarifying legal definitions of ownership but clarifying public interpretations and perceptions.

C. Grazing Lands. To the east on the dry interior grasslands the potential for the cattle industry was being realised at the end of the nineteenth century. Crown control of grazing lands began as early as the 1870s. The impact of this industry on access was through a historical tradition of vagueness of rights and physical constraints.

The land was dispensed of under leases with controls through time and yearly rentals. The principle of granting security led to leases that carried with them a grant of absolute possession, modelled on the limited ownership leases under Common Law, subject only to vague clauses allowing access along existing roads and trails.

In 1919, a new Grazing Act introduced alternative licences and permits to the old leases (RSBC, 1924). The licences and permits issued were not grants of absolute possession, but short-term interests in pasturage or hay. Though they had no real possessory rights they were entitled to protect their interest by erecting fences and preventing damage and there was no apparent visual difference between the licences, leases and permits.

The legacy of the Crown control of grazing land has been a vague clause of channelled access to these lands which has now come under fire, as ranchers attempt to reform and formalise their control and recreationists attempt to defend indeterminate rights. Again, the public have been left with a mixed perception of what public land is and their philosophical commitment to it. Remedial legislation has been made to placate the largest lobby, that is, the hunting and fishing lobby, by changing trespass laws for those with valid fishing and hunting licences. Those found on Crown grazing land with licences are exempted from trespass. However, the discrimination toward one recreational group has caused a great deal of criticism and demand for clear policy on access. Furthermore, the confusion of leases and licences, where different mechanisms for controling public access are available, has led to demands for clarification and conflicts between different philosophical commitments to public land.

D. Other Leases. Land owned by the Crown that was not alienated under lease, licence or permit, or reserved for some public purpose, for example, highway or park use, or for Indian settlement, was regarded as unalienated Crown land. The law has never clarified public rights of access to these lands. Unauthorised use that amounted to damage or occupation was not tolerated under statute, though the traveller, as described under the Forest Act, was tolerated as long as his use was consistent with the managing authority, in this case the Crown. No right of access for recreation was expressly granted over Crown land to the public. The Crown, like any holder of land in fee simple, was the owner and had the right of exclusive use and enjoyment.

The use of land for mining was again governed by a system of leases and claims, and the use of land for large-scale transportation, energy and communication services came to be governed through a system of ownership and management by Crown corporations. The impact on access was through an unclear definition of rights leading to public confusion of what was public land or public rights within the spectrum of land under different ownerships and management.

By the second decade of the twentieth century, this mosaic of private, semi-private, semi-public and public land had been formed and the policy of government to adopt the role of land manager had been established. Into this confusing structure of land tenure, the processes of possession and reservation of land had been ingrained and a pattern of recreational use of land had begun.

* * * * * * * *

The mechanisms by which land has been made available for recreation have stemmed from the principles within British Columbia's early land policies.

First, there has been the mechanism of possessory remedies which has negatively defined opportunities. Occupiers of land have defended their exclusive use and enjoyment of the land through the Common Law and Statute Law remedies of trespass and, therefore, opportunities have been defined by default, that is, where no occupation of the land exists. This mechanism has evolved out of the principles of ensuring 'best use' and security to the occupier. As a result, the public consciousness has been ingrained with a trespass ethic.

Secondly, there has been the mechanism of retaining ownership of land and resources (through the principles of tenure and regalia), while releasing resources through temporary tenures. This has led to a complicated mosaic of public, semi-public and private land and a vagueness of public rights to and in the land. The vagueness has opened up opportunities where vested interests were not in direct competition for rights or the resource. However, as intensification of land uses and population pressures have increased, this vagueness has restricted opportunities for recreation and led to conflict.

The mechanism of designating land to single use has led to real and perceived restrictions on integrating recreation with other economic uses. Likewise, recreation has been contained within the boundaries of parks under the economic guise of tourism in the hinterland, and under a label of social amenity in the settlements. Informal opportunities have been carried out on unoccupied lands but as economic use of these lands encroaches on to these territories, the pioneering demands for security for exclusive recreational use are expressed.

The luxuries of polarising land uses, retaining exclusive possession, having absolute security and being able to secure something for everyone have made the demands of a growing population with an ever-decreasing resource difficult to balance. Though these pioneering expectations continue, the values placed on the land are swinging from economic to aesthetic. The governing authorities of British Columbia now find themselves not only questioning their own policies and values but having to reshape both the legal infrastructure and expectations of the public in order to resolve the conflicts and demands for recreational opportunities and integrated use of land.

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* Joint winning entry, Philip Wigley Memorial Essay Competition, 1986.

GLOSSARY

Definitions are either from common dictionary sources or if specific, the source is quoted.

Access — means of entry, passage or approach, also restated as temporarily occupying lands.

Accessibility — the extent to which an individual exercises his/her means of entry, passage, approach or temporary occupation in a given time and place (Centre for Leisure Research, 1984).

Common Law — law made in the courts by judges, originating in England (Card, Murdoch and Schoefield, 1981). British Columbia inherited the Common Law in 1858 and from Confederation onwards was responsible for making its own Common Law.

Crown lands — include ungranted Crown or public lands or Crown domain and are within and belong to the Crown in right of the Province of British Columbia and whether or not any waters flow over or cover the same (RSBC, 1912).

Crown grant — any instrument in writing under the public seal of the colony to convey land in fee simple (RSBC, 1871).

Crown timber lands or forests — any trees, timber and products of the forests in respect of whereof the Crown in right of the Province of British Columbia is entitled to demand and receive any royalty, revenue or money (RSBC, 1912).

Doctrines of Estate — the legal doctrine that states that ownership can be split up into interests of different durations, e.g. freehold, leasehold, trusteehold (Card, Murdoch and Schoefield, 1981).

Doctrines of Tenure — the legal theory that land is not owned outright but held by and for the Crown (*ibid.*).

Easements — third party right in land which may be legal or equitable (*ibid.*).

Freehold (fee simple estate) — an estate of inheritance that with the death of the owner passes to the heir (*ibid.*).

Hinterland — land outside of settlements (see Settlements) where land is not permanently occupied.

Leasehold — a leasehold interest is where another landlord or lessor grants him her exclusive possession of property as tenant lessee for a certain defined period (*ibid.*).

Licence — passes no interest in the land, it makes lawful some use of the land (*ibid.*).

Ownership — the legal relationship existing between a person and a thing (land). Absolute ownership is the right of using and disposing of a subject as one's own, except so far as restricted by law or paction (Rankine, 1909).

Possession — the having or holding of a thing within the possessor's control (*ibid.*).

Possessory remedies — remedies directed to the protection of possession, i.e., retaining possession when disturbed and recovering it when lost. The ability to prosecute trespassers is a possessory remedy (*ibid.*).

Regalia — those things put beyond the reach of ordinary commerce which the Crown appropriates, which if appropriated by an individual would usually be to the public loss. Regalia majora cannot be alienated or disposed by the Crown; the Crown acts as guardian of majora for public interest, e.g. navigational rights of way. Regalia minora can be alienated and therefore are held by the Crown for profit to the public or Crown purse, e.g. forests, minerals (*ibid.*).

Rights of way — like easements, a third party right in land which is legal. Public rights of way are where the right is vested in the public at large (*ibid.*).

Settlement — a colony, village or those places where some permanent occupation and daily life is carried out; can be agricultural or town settlements.

Statute law — law made by a legislative enactment.

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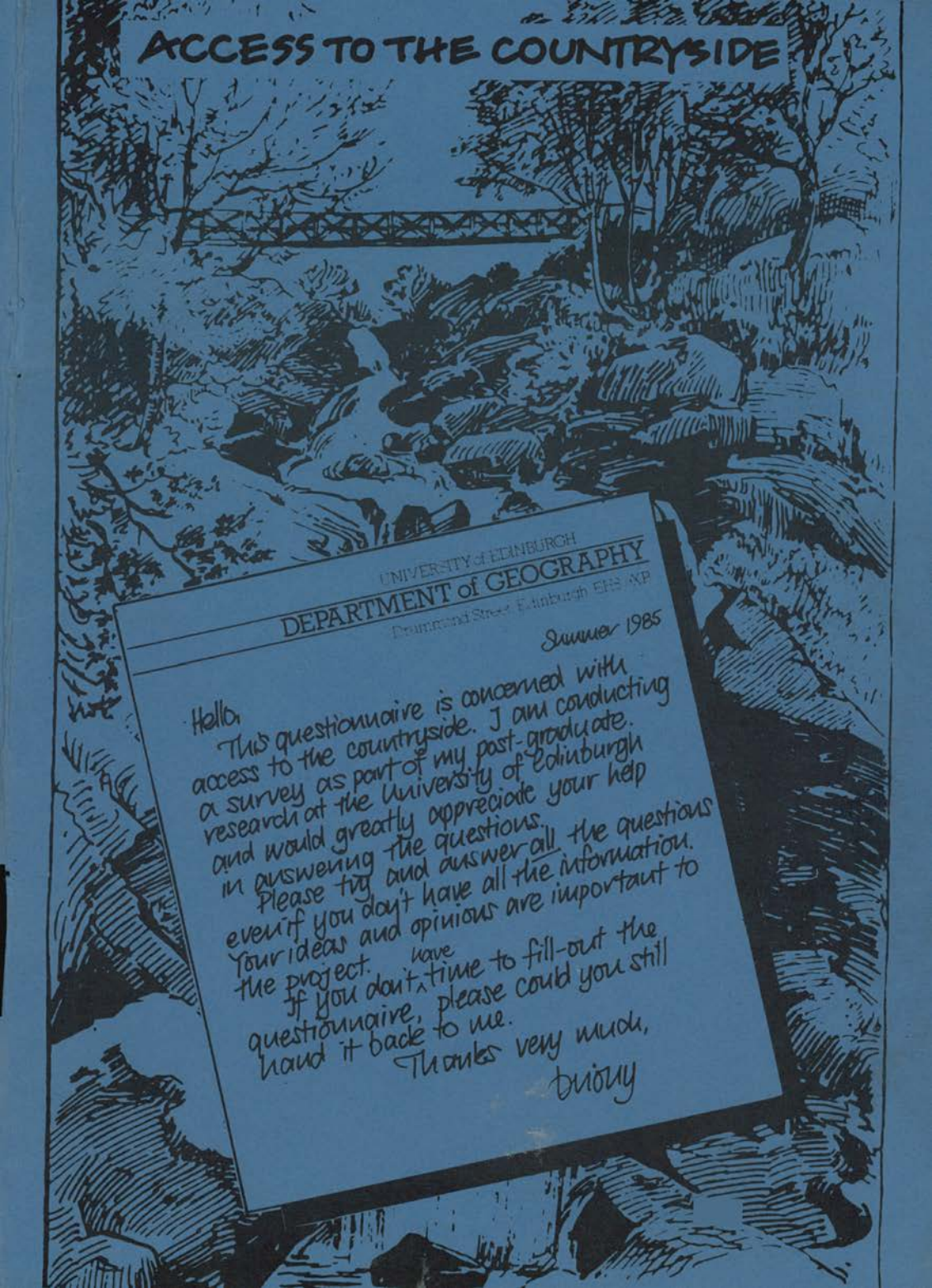
RSBC refers to *Revised Statutes of British Columbia* (Victoria). The date refers to the date of publication and consolidation of the statutes, e.g. (1871), (1897), (1924).

ACCESS TO THE COUNTRYSIDE



UNIVERSITY of EDINBURGH
DEPARTMENT of GEOGRAPHY
Drummond Street, Edinburgh EH8 9XP

Summer 1985

Hello,

This questionnaire is concerned with access to the countryside. I am conducting a survey as part of my post-graduate research at the University of Edinburgh and would greatly appreciate your help in answering the questions.

Please try and answer all the questions even if you don't have all the information. Your ideas and opinions are important to the project.

If you don't have time to fill-out the questionnaire, please could you still hand it back to me.

Thanks very much,

Briony

1) What outdoor recreation activities do you pursue on a daily and/or occasional basis? [PLEASE SPECIFY IN BOX]

2) What activity did you come here to do? [PLEASE SPECIFY IN BOX]

3) What was your main mode of travel here? [CIRCLE APPROPRIATE ONE]

FOOT | CAR | TRAIN | PRIVATE COACH
BICYCLE | BUS | MOTOR CYCLE | OTHER [SPECIFY]

4) Is this the first time you have been here? YES ☐ NO ☐
⇨ If NO, how often have you been here? TWICE ☐
3-5 TIMES ☐ 6-10 TIMES ☐ >10 TIMES ☐

5) How long do you plan to spend here? >2 HOURS ☐
HALF A DAY ☐ FULL DAY ☐ NO. OF DAYS [SPECIFY NUMBER] ☐

6) Is your visit here : [TICK ONE]
- the main object of a day outing? ☐
- one part of a day outing ☐
- main part of a weekend outing ☐
- one part of a weekend outing ☐
- one part of a longer holiday ☐

7) Where or how did you hear about this location? [TICK ONE]

- ☐ always knew about it
- ☐ family or friends
- ☐ newspaper or magazine [SPECIFY]
- ☐ outdoor recreation guide/tourist guide
- ☐ outdoor organisation
- ☐ saw the signs from the road
- ☐ located it on a map
- ☐ television/radio
- ☐ other [SPECIFY]

(8) Why did you come here? _____

_____

(9) In this list below, I have suggested various reasons why you might have come here. Please indicate which reasons are important to you by circling the appropriate number or star.

	VERY IMPORTANT 1	2	3	4	5 NOT AT ALL IMPORTANT	? NEVER CONSIDERED IT
○ presence of marked paths	1	2	3	4	5	?
○ safety from motor traffic	1	2	3	4	5	?
○ presence of toilets	1	2	3	4	5	?
○ presence of carpark	1	2	3	4	5	?
○ guarantee of scenery	1	2	3	4	5	?
○ free-entry and use	1	2	3	4	5	?
○ guarantee of being able to do specific activity	1	2	3	4	5	?
○ guaranteed rights of access	1	2	3	4	5	?
○ guarantee of wildlife and natural features	1	2	3	4	5	?
○ guarantee of meeting/seeing people	1	2	3	4	5	?
○ convenience of location to home/accommodation	1	2	3	4	5	?
○ familiarity of location	1	2	3	4	5	?

THE NEXT FIVE QUESTIONS CONCERN YOUR IDEAS ON PUBLIC RIGHTS OF ACCESS TO LAND. IF THERE ARE QUESTIONS YOU DON'T KNOW PLEASE TRY AND ANSWER WHAT YOU THINK IS CORRECT. I AM MOST INTERESTED IN WHAT YOU THINK

(10) It is often stated that there is no law of Trespass in Scotland Do you believe that to be correct? YES ☐ NO ☐

DON'T KNOW ☐ COMMENT _____

_____

(11) Do you assume you have rights of access to this property:

a) ☐ all the time? OR ☐ some of the time? [TICK ONE]

b) ☐ in certain areas? OR ☐ everywhere? [TICK ONE]

c) ☐ by law? OR ☐ by permission? [TICK ONE]

(12) In Norway, the Outdoor Recreation Act allows Norwegians free access anywhere in the countryside provided they do not go on arable land or within 150 metres of someones house. Would you agree to such an act being passed in Scotland? [CIRCLE ONE]

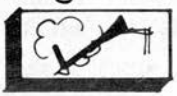
STRONGLY AGREE 1 AGREE 2 DISAGREE 3 STRONGLY DISAGREE 4

COMMENT _____

_____

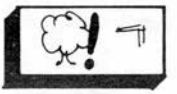
(13) This question is aimed at finding out what you think are your rights of access on foot to these different types of land below. Please mark in each box the symbol that best describes your thoughts on access.

KEY



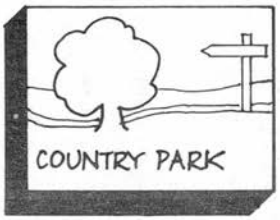
"I THINK I HAVE RIGHTS OF ACCESS TO THIS LAND."

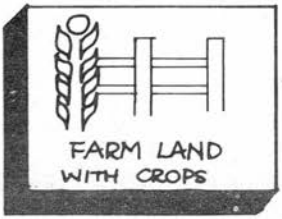
"I DON'T THINK I HAVE RIGHTS OF ACCESS."

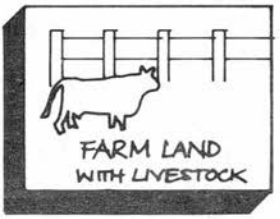


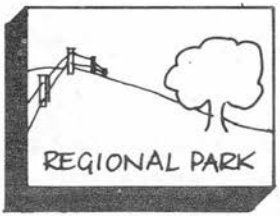
"I HAVE RIGHTS BUT I WOULD BE UNEASY TO WALK."

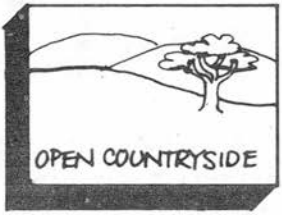
"I DON'T UNDERSTAND WHAT THIS CATEGORY OF LAND IS."

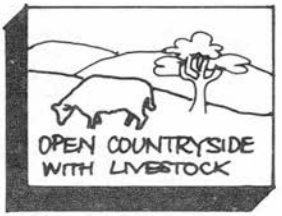


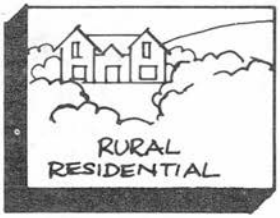


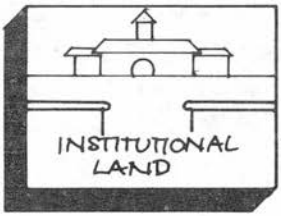


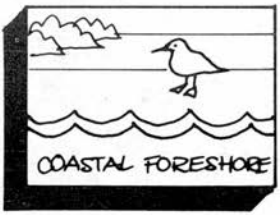


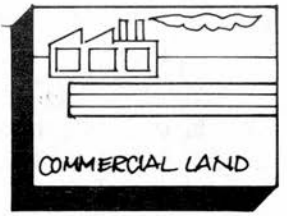


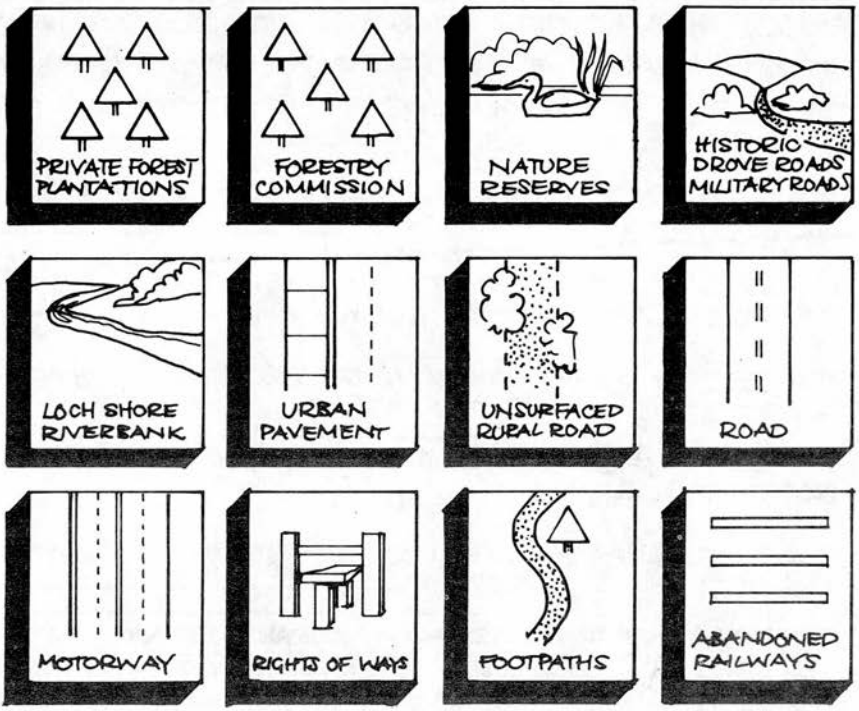












(14) Have you ever been prevented from entering and passing across a tract of land where you assumed you had the right of free access? YES ☐ NO ☐

a) If YES, where? _____

b) What were the circumstances? _____

(15) Are you satisfied with the choice of places for pursuing your outdoor activities in Scotland? YES ☐ NO ☐ OTHER [PLEASE SPECIFY]

(16) If the existing opportunities were not satisfactory would you be prepared to pay directly for access to land? YES ☐ NO ☐ OTHER [PLEASE SPECIFY] _____

(17) If the existing opportunities were not satisfactory would you be prepared to pay indirectly through taxes for improvements? YES ☐ NO ☐ OTHER [PLEASE SPECIFY]

(18) The questions below describe some restrictions on access to different types of land in Scotland. I am interested in whether you are aware of these restrictions and whether you feel each is justified.

WERE YOU AWARE THAT YOUR ACCESS CAN BE RESTRICTED BY LAWS:

YES ☐ NO ☐ (a) on nature reserves to protect the habitats of plants and animals?

YES ☐ NO ☐ (b) Do you feel this restriction is justified?
COMMENT _____

YES ☐ NO ☐ (c) on water catchments to protect the quality of the water?

YES ☐ NO ☐ (d) Do you feel this restriction is justified?
COMMENT _____

YES ☐ NO ☐ (e) on private land if you are camping overnight?

YES ☐ NO ☐ (f) Do you feel this restriction is justified?
COMMENT _____

WERE YOU AWARE THAT SEASONAL/TEMPORARY RESTRICTIONS ON ACCESS:

YES ☐ NO ☐ (g) can be requested on Forestry Commission or private forest plantations for forest protection?

YES ☐ NO ☐ (h) Do you feel this restriction is justified?
COMMENT _____

YES ☐ NO ☐ (i) can be requested on arable land to protect crops?

YES ☐ NO ☐ (j) Do you feel this restriction is justified?
COMMENT _____

YES ☐ NO ☐ (k) can be requested on grazing land to protect livestock (especially if dogs accompanying you)?

YES ☐ NO ☐ (l) Do you feel this restriction is justified?
COMMENT _____

YES ☐ NO ☐ (m) can be requested on land used for grouse shooting and deer stalking?

YES ☐ NO ☐ (n) Do you feel this restriction is justified?
COMMENT _____

IN THIS FINAL SECTION I WOULD LIKE TO ASK A FEW BACKGROUND QUESTIONS. THE INFORMATION IS FOR STATISTICAL USE ONLY

(19) Could you give me some details about your household, starting with yourself? [PLEASE TICK APPROPRIATE BOX UNDER AGE AND SEX FOR EACH MEMBER]

MEMBER OF HOUSEHOLD E.G.	AGE: UNDER 15	15-24	25-44	45-64	65+	SEX: M	F
1							
2							
3							
4							
5							
6							
7							
8							
9							

(20) Are you: ☐ employed full-time? (including self-employed)
☐ employed part-time?
☐ unemployed?
☐ retired?
☐ a student?
☐ working in the home?

(21) What job do (did) you do? _____

(22) What is the highest year of school you have completed?
UP TO ORDINARY LEVEL ☐ HIGHERS ☐ TECHNICAL DIPLOMA ☐
UNIVERSITY DEGREE ☐ POST-GRADUATE DEGREE ☐
OTHER _____

(23) Where do you live at present? TOWN/VILLAGE [SPECIFY] _____
If not from Scotland, specify country: _____

(24) How would you describe the area where you live? [TICK ONE]
URBAN ☐ SUBURBAN ☐ RURAL ☐

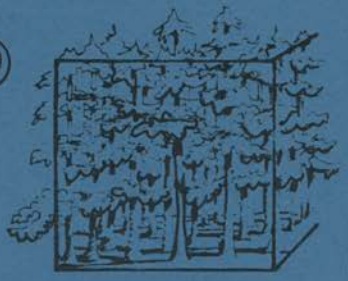
(25) Where were you brought up as a child? TOWN _____
If not in Scotland, specify country: _____

(26) How would you describe the area where you were brought up?
URBAN ☐ SUBURBAN ☐ RURAL ☐

(27) Are you a member of a recreation/conservation club? ☐ NO
YES [SPECIFY] _____

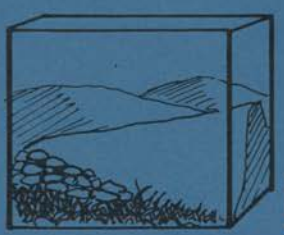
(28) Do you own a car or have access to one? YES ☐ NO ☐

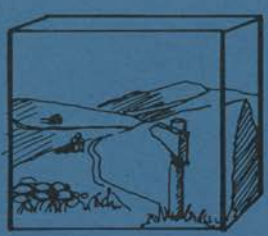
(29)



Given the choice of these two forest locations, in which would you prefer to walk? [TICK APPROPRIATE BOX]

(30)



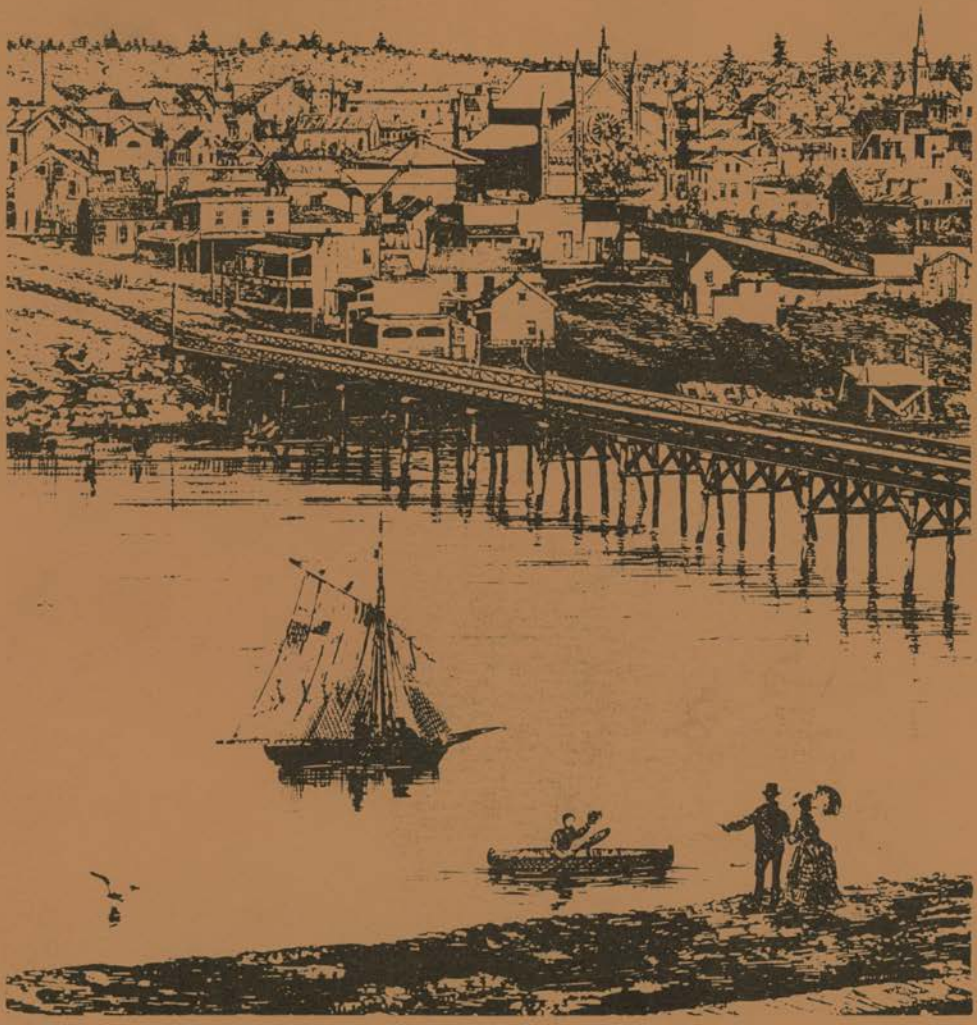


Given the choice of these two upland locations, in which would you prefer to walk? [TICK APPROPRIATE BOX]

That's it! Thanks very much. Any comments, ideas welcomed here.

Antony

Recreation Access ?



UNIVERSITY OF EDINBURGH EDINBURGH, SCOTLAND EH8 9XP

DEPARTMENT OF GEOGRAPHY

UNIVERSITY OF VICTORIA VICTORIA, B.C., CANADA V8W 2Y2

Hello, summer, 1984

This questionnaire is concerned with access across land for people who use and enjoy the outdoors. I am asking for your ideas and opinions on where you go and why. British Columbia is in the process of rethinking laws and policies about where people will be allowed to go, and some input from you may help with decisions to be made.

I encourage you to answer all the questions, if some you need explained just ask me. Any questions or comments you have on the subject I would be most interested in.

Thanks for your interest and help,

Briony Penn

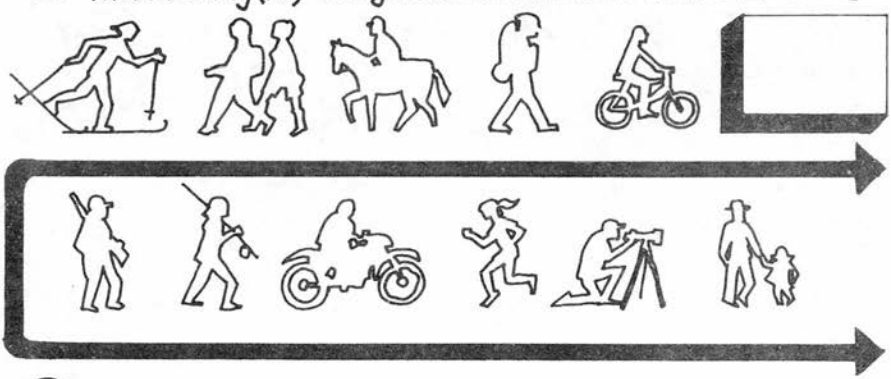
(1) What outdoor recreation activities do you pursue?

ACTIVITIES THAT YOU PURSUE FREQUENTLY (DAILY, WEEKLY)

ACTIVITIES THAT YOU PURSUE OCCASSIONALLY (MONTHLY)

ACTIVITIES THAT YOU PURSUE VERY OCCASSIONALLY (1-5 TIMES A YEAR)

(2) What activity(ies) did you come HERE to do? [SPECIFY IN BOX]



(3) What was your main MODE of travel here? [TICK APPROPRIATE BOX]

foot	☐	car	☐
bicycle	☐	bus	☐
motorcycle	☐	train	☐
horse	☐	other [SPECIFY]	☐

④ Is this the first time you have been here? YES ☐ NO ☐
⇨ If NO, how often have you been here?
TWICE ☐ 3-5 TIMES ☐ 6-10 TIMES ☐ MORE THAN 10 ☐

⑤ Where or how did you hear about this _____?

- ☐ always knew about it
- ☐ family or friends
- ☐ newspaper or magazine [SPECIFY] _____
- ☐ outdoor recreation/tourist guide
- ☐ outdoor organisation
- ☐ saw the signs from the highway/road
- ☐ located it on a map
- ☐ other [SPECIFY] _____

⑥ How long do you plan to spend in Garibaldi Park _____?

- ☐ under an hour
- ☐ 1-4 hours
- ☐ a full day
- ☐ a number of days If so, how many? ☐

⑦ Do you intend to leave this area while still pursuing your activity e.g. bike tour YES ☐ NO ☐

⑧ Did you plan to come here before you set out from your home or were you just passing by?
PLANNED VISIT ☐ UNPLANNED VISIT ☐

⑨ Why did you come here? _____

(11) Please take a look at the list below. I have listed various reasons why you might have come here. Indicate which reasons are important to you by circling the appropriate number for each.

1 MOST IMPORTANT	2 VERY IMPORTANT	3 IMPORTANT	4 NOT IMPORTANT	5 NEVER CONSIDERED IT

o Presence of marked trails	1	2	3	4	5
o Safety from motor traffic	1	2	3	4	5
o Presence of washrooms, carpark	1	2	3	4	5
o Assurance of high-quality scenery	1	2	3	4	5
o Free entry and use	1	2	3	4	5
o Assurance of being able to do specific activity	1	2	3	4	5
o Assured legal rights of access	1	2	3	4	5
o Assurance of wildlife and natural features	1	2	3	4	5
o Assurance of meeting/seeing people	1	2	3	4	5
o Convenience of location to home/accomodation	1	2	3	4	5
o Familiarity of location	1	2	3	4	5
o Other [SPECIFY] _____	1	2	3	4	5

(12) Are you generally satisfied with the choice of places for pursuing your outdoor recreation activities in British Columbia?

YES ☐ [COMMENT] _____

NO ☐ [COMMENT] _____

(13) If the existing opportunities were not satisfactory to you, would you be prepared to pay directly for access to private or leased land?

YES ☐ [COMMENT] _____

NO ☐ [COMMENT] _____

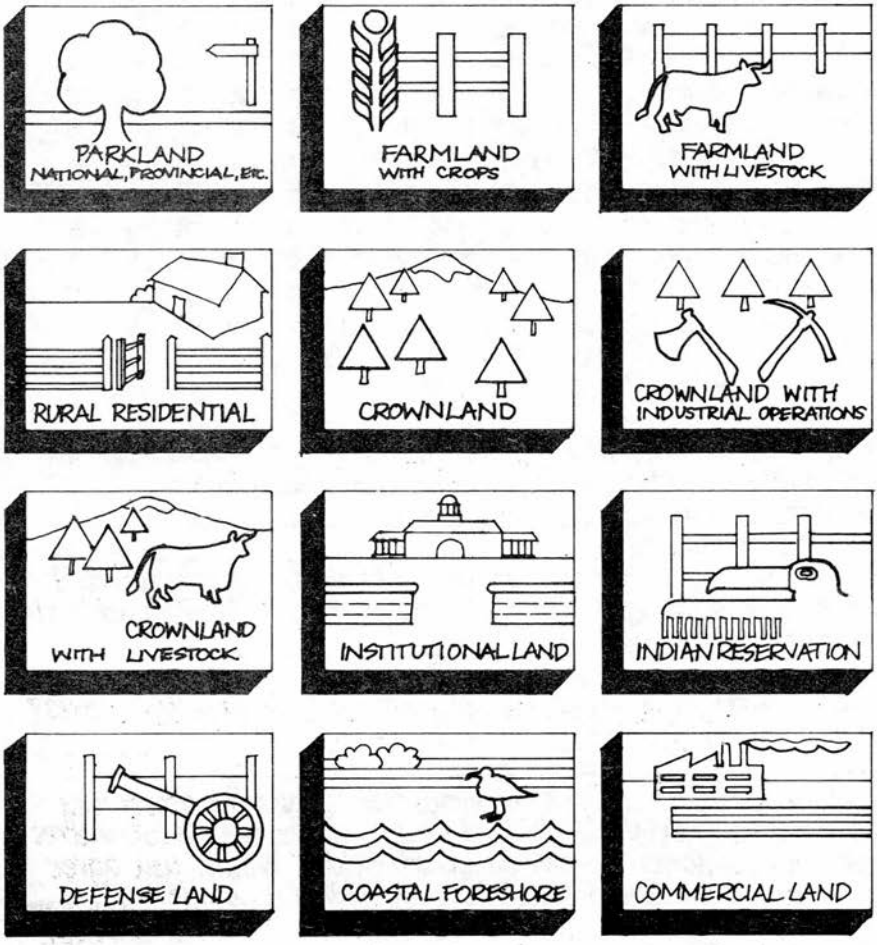
(14) If NO, would you be prepared to pay indirectly through your taxes?

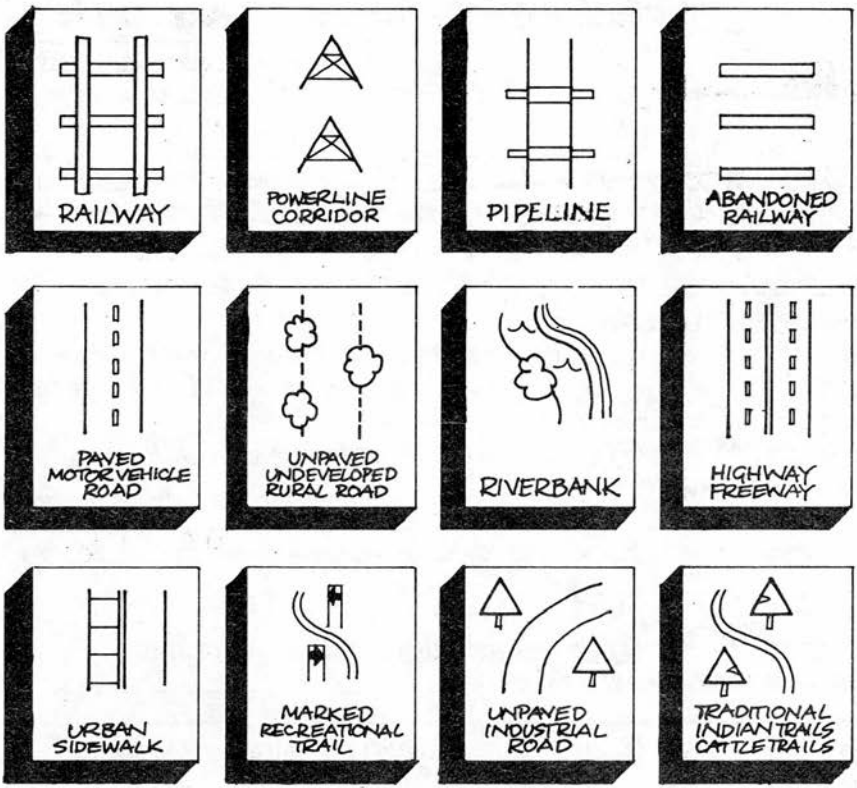
YES ☐ NO ☐ [COMMENT] _____

(15) In Norway the Act of Open Air allows Norwegians free access anywhere in the countryside provided they do not go within 150 metres of someone's home or over ploughed fields. Would you agree to such an act being passed in British Columbia? [CIRCLE NUMBER]

STRONGLY AGREE	AGREE	DISAGREE	STRONGLY DISAGREE
1	2	3	4

(16) "Right now you are legally within your rights to be in Garibaldi Park because you have the right of free entry and passage through this land. Given the different titles of land in British Columbia as categorised in the boxes below, indicate those tracts and corridors of land where you assume you also have a RIGHT OF FREE ACCESS ON FOOT by picking the appropriate boxes.





(17) Have you EVER been prevented from entering and passing across a tract of land where you assumed you had the right of free access?

YES ☐ NO ☐

a) If YES, where? _____

b) What were the circumstances? [IN EACH CASE] _____

_____

_____

_____

(18) What percentage of the land in British Columbia do you think is Crownland? ☐

(19) What percentage of land in British Columbia do you think is legally accessible to you? ☐

(20) The Outdoor Recreation Council of B.C. have stated:

the laws and policies governing recreational access are fragmented leaving the public unsure of their rights to Crown and private land.

The questions below describe some legal restrictions on your rights of access. I am interested in whether you know of these restrictions and if you feel each of these restrictions is justified.

WERE YOU AWARE THAT YOUR ACCESS CAN BE RESTRICTED COMPLETELY BY LAW: –

YES ☐ NO ☐ (a) on Crownland when endangered or rare native plants or animals in their natural habitat need to be protected?

YES ☐ NO ☐ (b) Do you feel this restriction is justified?

YES, with reservations [SPECIFY] _____

YES ☐ NO ☐ (c) on Crownland when a lease is held for the grazing rights?

YES ☐ NO ☐ (d) Do you feel this restriction is justified?

YES, with reservations [SPECIFY] _____

YES ☐ NO ☐ (e) on Crownland to protect heritage sites and archaeological features?

YES ☐ NO ☐ (f) Do you feel this restriction is justified?

YES, with reservations [SPECIFY] _____

YES ☐ NO ☐ (g) on privately-owned land to protect the rights of private property owners?

YES ☐ NO ☐ (h) Do you feel this restriction is justified?

YES, with reservations [SPECIFY] _____

YES ☐
NO ☐
YES ☐
NO ☐
YES, with reservations

(i) on Crownland where a licence is held for logging operations for forest protection.

(j) Do you feel this restriction is justified?

YES ☐
NO ☐
YES ☐
NO ☐
YES, with reservations

(k) on foreshore when a lease is held for special purposes e.g. marinas, fish farming?

(l) Do you feel this restriction is justified?

YES ☐
NO ☐
YES ☐
NO ☐
YES, with reservations

(m) on Crownland to protect rare and unique geologic features?

(n) Do you feel this restriction is justified?

YES ☐
NO ☐
YES ☐
NO ☐
YES, with reservations

(o) on Crownland that is leased for private commercial, industrial, residential and commercial recreation purposes?

(p) Do you feel this restriction is justified?

YES ☐
NO ☐
YES ☐
NO ☐
YES, with reservations

(q) in parks where park management consider it appropriate to protect the environment

(r) Do you feel this restriction is justified?

YES ☐
NO ☐
YES ☐
NO ☐
COMMENT

(s) on land designated as Indian reservation to protect the rights of those people on the reservations.

(t) Do you feel this restriction is justified?

IN THIS FINAL SECTION I WOULD LIKE TO ASK A FEW BACKGROUND QUESTIONS. THE INFORMATION IS FOR STATISTICAL USE ONLY.

(21) Could you give me some details about your household starting with yourself i.e #1. [PLEASE TICK APPROPRIATE BOX UNDER AGE AND SEX FOR EACH MEMBER]

	MEMBER OF HOUSEHOLD e.g. SPOUSE FRIEND, CHILD PARENT OR RELATIVE...	AGE						
		UNDER 15	15 to 24	25 to 44	45 to 64	65+	M	F
1	YOU							
2								
3								
4								
5								
6								
7								
8								
9								
10								

(22) Are you:
- ☐ employed full time?
- ☐ employed part time?
- ☐ unemployed?
- ☐ retired?
- ☐ a student?
- ☐ working in the home?

(23) What job(s) do (did) you actually do? _____

(24) What is the highest year of school you have completed?

school [grades]	1 2 3 4 5 6						
	7	8	9	10	11	12	13
college/university	1	2	3	4	5	6	7+
post graduate	1	2	3	4	5+		

(25) Where do you presently live?

village/town/city _____

province _____

country _____

(26) How would you describe the area where you live?
- urban ☐
- suburban ☐
- rural ☐
- other ☐

(27) Where were you brought up as a child?
village/town/city _____
province _____ country _____

(28) How would you describe the area where you grew up?
urban ☐ suburban ☐ rural ☐ other ☐

(29) Are you a member of any outdoor recreation/conservation organisation? NO ☐ YES [SPECIFY] _____

(30) Do you own a car, or have access to one? YES ☐ NO ☐

(31) Are you: ☐ first generation Canadian
☐ second generation Canadian
☐ third generation Canadian
☐ fourth generation or more
[ONE TICK FOR MOTHER'S SIDE ONE CROSS FOR FATHER'S SIDE]

(32) What is your ancestors' country of origin?
_____

(33) Do you own land? YES ☐ NO ☐

☐

☐

(34) Given the choice of these two forest locations in which would you prefer to walk? [TICK APPROPRIATE BOX]

(35) If you have any comments or suggestions regarding any of the questions or the survey itself, please use this space.

That's it for questions to fill out, though, I would like to ask you to describe some of the other places you go to for the outdoor activities you listed in question One. If you could turn back to page 1 I will write down your responses.

thanks very much
briony